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ABSTRACT

This document is a compilation of final federal regulations issued from January through July, 1994, concerning student financial aid (SFA) and related concerns. The first portion includes the following parts under Title 34 of the Code of Federal Regulations: Drug Free Schools and Campuses, Family Educational Rights and Privacy, Institutional Eligibility, Secretary's procedures and criteria for recognition of accrediting agencies, Secretary's recognition procedures for State agencies, National Science Scholars Program, Paul Douglas Teacher Scholarship Program, Robert C. Byrd Honors Scholarship Program, Student Assistant General Provisions, Federal Perkins Loan Program; Federal Work-Study Program, Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, Federal Pell Grant Program, and State Student Incentive Grant Program. The second portion of the document includes issues of the Federal Register from January to July, 1994, which present regulations for: the Federal Direct Student Loan Program; Educational Opportunity Centers; general provisions of student assistance; the Federal Family Education Loan Program; recognition of accrediting agencies; campus safety; the National Early Intervention Scholarship and Partnership Program. (JLS)

HE

ED 402 863

United States
Department of
Education

Student Financial
Assistance Programs

Current Student Aid and Other Related Regulations

(Through January 31, 1994)

HE 029 803

BEST COPY AVAILABLE

—Federal Regulations—
Their Development and Publication

This compilation includes the regulations for the Student Financial Assistance (SFA) programs that are administered by the Office of Postsecondary Education within the U.S. Department of Education. Many of these programs are authorized by Title IV of the Higher Education Act of 1965, as amended, and have come to be known as the "Title IV programs."

The relationship of law to regulations

The statutory language that authorizes the SFA programs specifies many of the eligibility and administrative requirements for participation in the programs. Major changes are usually made every 4-5 years when the programs are reauthorized. The most recent reauthorization took place with the Higher Education Amendments of 1992. For example, the 1992 Amendments removed the dollar limit on PLUS loans, making loans available up to the amount of the student's cost of attendance (minus any other expected aid).

Other changes to the law may be made on an annual basis as a part of the appropriations process. For instance, the Omnibus Reconciliation Act of 1993 eliminated the Federal Supplemental Loans for Students (SLS) program.

Some legislative changes are written directly into the regulations. For instance, when §484 of the Act was amended to specify how satisfactory progress is measured, this language was added to Section 668.7 of the General Provisions.

In other cases, regulatory language must be written that explains how the statute is to be implemented. Examples of regulatory provisions that are not specified in the law include the method for calculating Pell Grants for a payment period, and the refund formula.

Proposed rules, final rules, and notices

New regulations may be issued as proposed regulations, final regulations, or notices and are published in a government publication called the **Federal Register**. Regulations are usually published first as a Notice of Proposed Rulemaking (NPRM). An NPRM includes background information, proposed changes to current regulations, and the address and closing (due) date for receiving comments from the public. After the Department receives comments on an NPRM from the public, it reviews the comments, incorporates any needed changes, and publishes final regulations.

In some cases, regulations are not preceded by an NPRM, but are published as a Final Rule—for instance, when the regulations simply incorporate recent statutory changes, or when the Secretary finds that solicitation of public comments would be otherwise impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Final regulations supplement, amend, or replace earlier final regulations. Regulations published as notices generally concern procedural matters that do not require a review or comment period. The law requires some notices to be published annually—for example, notices of program deadline dates and notices to update need-analysis charts.

How regulations are developed

Regulations for the SFA programs are developed by the appropriate organizational unit within the Office of Postsecondary Education—OPE (refer to the chart on the opposite page). For example, the regulations for the Federal Pell Grant Program are developed by the Pell and State Grants Section in the Grants Branch.

The text of the regulation, whether it is a notice, NPRM, or final regulation, must be reviewed and approved by other offices within the Department, such as the Office of the General Counsel and the Office of the Inspector General. After the comments from these offices have been incorporated in the regulation or otherwise resolved, the draft regulation is submitted to the Office of Management and Budget for review of:

- overall federal policy;
- budget implications;
- potential paperwork burden; and
- cost to the service population (in the case of ED, institutions of postsecondary education, lenders, guaranty agencies, students, and parents).

When the Department publishes a proposed regulation, the preamble to the regulation will explain where comments should be sent, and specify the length of the comment period. The comment period is usually 30, 45, 60, or 120 days. After the comment period ends, the office that drafted the regulation reviews all of the comments that were received. In most cases, these comments reflect administrative and other problems that might arise if the regulation was implemented as first proposed. The originating office must weigh the concerns voiced by the service population and the interest of the general public in ensuring program integrity, as it decides if changes should be made as a result of these comments. Once the originating office has drafted a final regulation, that regulation must again be reviewed by other offices in the Department, and by the Office of Management and Budget.

When final regulations are published, they include a summary of the comments received and the Department's responses to them. Any changes incorporated in the final regulations that resulted from the comments are noted. In addition, if the Department has not made changes for the final regulations as recommended in the comments, the Department will explain its reasons for that decision.

Negotiated rulemaking

The law requires certain categories of regulations to undergo a review process called "Negotiated Rulemaking" before they are published as an NPRM. For example, the Higher Education Amendments of 1992 required the Department to convene regional meetings to obtain public involvement in developing proposed regulations pertaining to the Federal Family Education Loan Program, general provisions, and program integrity (state postsecondary review program, accrediting agency approval, and eligibility and certification procedures). These meetings included individuals and representatives of the groups involved in the SFA programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

The attendees at these public meetings were given the opportunity to nominate individuals to serve as negotiators at later sessions. From this list of nominees, the Department selected a panel of negotiators. To the extent possible, the Department selected individuals reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets. The negotiation sessions were held at conference facilities secured by the Department, and lasted a week at a time. For some regulations, as many as three of these week-long sessions were necessary to allow full discussion of the issues raised by the negotiators. The sessions were moderated by an independent mediator retained by the Department.

Following a comprehensive discussion and exchange of information, the Department took into account the information received at those meetings as it developed the proposed regulations that were published in the **Federal Register**.

How regulations are numbered by Title, Part , and Section

The **Federal Register** provides a uniform system for publishing federal documents. The basic component of the system is the Code of Federal Regulations (CFR). The CFR is divided into 50 titles according to subject matter. Each title is further divided into parts. Federal regulations relating to education are designated as "Title 34 of the code of Federal Regulations" or "34 CFR." The Title 34 regulations are presently published in three volumes (Parts 1 to 299, Parts 300 to 399, and Part 400 to end). Regulations governing the SFA programs for postsecondary education currently include the following parts under Title 34:

PART	SUBJECT
86	Drug Free Schools and Campuses
99	Family Educational Rights and Privacy
600	Institutional eligibility
601	Eligibility of foreign medical schools for GSL
602	Secretary's procedures and criteria for recognition of accrediting agencies
603	Secretary's recognition procedures for State agencies
652	National Science Scholars Program
653	Paul Douglas teacher scholarship program
654	Robert C. Byrd Honors Scholarship Program
668	Student Assistance General Provisions
674	Federal Perkins Loan Program
675	Federal Work-Study Program
676	Supplemental Educational Opportunity Grant Program
682	Federal Family Education Loan Programs
690	Federal Pell Grant Program
692	State Student Incentive Grant Program

Each part of the regulations is divided into sections. For example, Section 682.209 of the final regulations for the Federal Family Education Loan Programs, published December 18, 1992, is titled "Repayment of a Loan." When referring to this section, it may be cited as "Section 682.209," "§ 682.209," or "34 CFR 682.209." Sections are divided into subsections with the following sequential lettering and numbering system: (a), (1), (i), and (A). For example, the subsection on "Conversion of a loan to repayment status for a PLUS loan disbursed in more than one installment" is § 682.209(a)(2)(i); the subsection on determining when the repayment period begins for a Stafford loan with an interest rate of 7 percent is § 682.209(a)(3)(i)(A).

682.209 Repayment of a loan.

(a) Conversion of a loan to repayment status. (1) For a PLUS loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

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Reading a proposed regulation

The preamble of a regulation contains much useful information about the contents of the regulation and the intent of the regulatory changes. The preamble for an NPRM includes:

- Basic identifying information, such as the title of the regulations and the type of regulation.

> **DEPARTMENT OF EDUCATION**
>
> **34 CFR Part 668**
>
> **RIN 1840-AC10**
>
> **Student Assistance General Provisions**
>
> **AGENCY:** Department of Education
> **ACTION:** Notice of proposed rulemaking

- A summary statement of the purpose of the regulation. Note that the summary statement is usually the quickest place to identify the topics covered by the regulation. In the example below, the Summary specifically identifies the topic as "Verification," while the title of the regulation is simply "Student Assistance General Provisions."

> **SUMMARY:** The Secretary proposes to amend Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, Verification of Student Aid Application Information, to implement revisions resulting from the Higher Education Amendments of 1992 (Pub. L. 103-325) ...

- The due date for public comments (may also include dates for public hearings if they are to be held).

> **DATES:** Comments must be received on or before May 31, 1994.

- The address for comments, and the person and telephone number to contact for further information.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Shirley Regwriter, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202-5451.
FOR FURTHER INFORMATION CONTACT: Shirley Regwriter, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202-5451. Telephone (202) 000-0000.

- A "supplementary information" section. For most regulations, this section of the preamble is the best place to find a concise summary of the proposed changes and the reasons for the changes.

SUPPLEMENTARY INFORMATION: Subpart E of the Student Assistance General Provisions regulations governs the verification of the information that is used to calculate an applicant's expected family contribution as a part of the determination of the applicant's need for student financial assistance.

Summary of Proposed Changes

The Secretary proposes to change the requirement in §668.54 that determines the percentage of selected applicants required to be verified annually by an institution in any award year. The Secretary also proposes to change the amount of the dollar tolerance option in §668.59.

The preamble concludes with certifications that the regulation complies with Executive Order 12866 (cost/benefit analysis) and the Regulatory Flexibility Act (impact on small entities), and a List of Subjects covered in the regulation.

The actual regulation follows the preamble—in many cases, the regulation is much shorter than the preamble. To save space, the **Federal Register** sometimes does not contain the entire text of an existing regulation. Instead, only the language that is being changed will be printed, with the appropriate section references to indicate where the change is being made. To make sure that you

understand the effect of these changes, you must compare the printed changes with the complete text of the regulation that is being amended.

The Secretary amends Part 668 of the Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.7 is amended by revising paragraph (a)(4)(iii) as follows:

§668.7 Eligible student.

(a) * * *

* * * * *

(4) * * *

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau); or

* * * * *

(These changes have been inserted into the compilation of regulations, so that you will have the complete text of the regulations as of the date that the compilation was sent to print.)

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Reading a final regulation

The structure of a final regulation is very similar to that for a proposed rule. Many of the same elements described previously for proposed rules will be included in the preamble for a final rule, with the following major exceptions:

- The preamble for a final regulation will not give an address for comments unless it is an "interim final" regulation with comments invited.
- The preamble will include a section that gives the effective dates for the regulatory provisions.
- A "waiver of rulemaking" may be included if the final rule includes statutory or other changes that did not require public comment.
- The "supplementary information" section will include a summary of the comments received from the public, with the Department's decision.

> **Analysis of Comments and Changes**
>
> In response to the Secretary's invitation in the NPRM, 81 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.
>
> *Section 668.2 General Definitions*
>
> *Comments:* Several commentors supported the proposed changes to the general definitions. One commentor recommended clarifying the definitions of the PLUS Program, Stafford Loan Program and the Supplemental Loans for Students Program by adding the phrase, "to help pay for the costs of the student's postsecondary education" at the end of the definitions.
>
> *Discussion:* These definitions were amended to make them consistent with the definitions proposed in 34 CFR 682.100 of the November 20, 1990 Notice of Proposed Rulemaking for the Guaranteed Student Loan programs. The Secretary believes that further clarification is unnecessary.
>
> *Changes:* None.

Note that similar comments on a single issue may be addressed in a single comment and response.

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The "supplementary information" section will also include a summary, usually, bulleted, of the major changes made in the final regulation. Please note that the summary of changes for a final regulation only lists those changes that were made to the *proposed* regulation—the summary does not list those proposed changes that were adopted without further modification. Therefore, you must refer to the preamble of the NPRM as well as the final regulation for a complete summary of the changes that were adopted in the final regulation.

Effective Dates

Generally, regulations become effective following a 45-day period prescribed by law from the date of publication in the **Federal Register**. However, if the Congress adjourns during the 45-day period, some provisions of the regulations may have a later effective date. Portions of the regulation that include recordkeeping requirements may have later effective dates that depend on the approval of these information collection requirements by the Office of Management and Budget. These later effective dates will be published in the **Federal Register** when they are known.

Also, the master calendar specified by the Higher Education Amendments of 1986 requires major regulations to be published in final form by December 1 in order to be effective for the upcoming award year. The purpose of this provision is to give schools sufficient time to adjust to new regulatory changes before the new award year begins on July 1. The master calendar also requires annual updates to the tables used in the need analysis formulas to calculate expected family contributions; the tables must be published by June 1 of the year preceding the applicable award year.

To help you find when requirements took effect, we have included the relevant effective dates in small print at the end of each section of the regulations.

Distribution of the regulations

The Department orders reprints of SFA program regulations from the Government Printing Office and mails them to all schools that participate in the programs. (Reprints take 1-2 weeks for delivery to the Department.) OPE's Training and Program Information Division, Program Information Branch, oversees the distribution of the regulations and also makes them available electronically to a user's PC or main-frame terminal through the OPE electronic bulletin board, OPENet. While supplies last, you may order individual copies of this compilation from the Federal Student Aid Information Center, at 1-800-4 FED AID.

☆U.S. GOVERNMENT PRINTING OFFICE: 1994 - 381-450/21200

▽△▽ REGULATION UPDATE ▽△▽

As this regulation compilation went to print, the U.S. Department of Education published 9 final regulations and one proposed rule in the **Federal Register** on April 28th and 29th. Reprint copies of these regulations were mailed to postsecondary schools during month of May. Please refer to these reprints for the revised regulatory requirements in the following areas.

April 28, 1994

- **Institutional Eligibility**— §600.51-56 FFELP Eligibility for Foreign Schools
- **Student Assistance General Provisions**—§668.51-61 Verification **(Final Rule)**
- **Student Assistance General Provisions**—§668.54 and .59 Verification **(Proposed Rule)**

April 29, 1994

- **Student Assistance General Provisions, Federal Family Education Loan Programs, Federal Pell Grant Program**—
  Amends Subparts A&B, adds language governing third-party servicers to other subparts of General Provisions and FFEL regulations, revises 690.83 **(Interim Final with comments invited)**
- **Institutional Eligibility**—§600.1-41 (Final Rule)
- **Secretary's Procedures and Criteria for Recognition of Accreditating Agencies**—
  Amends §602.1-30 (Final Rule)
- **State Postsecondary Review Program**—New Part 667 (Final Rule)
- **Student Assistance General Provisions**—Campus Safety (Final Rule)
  Amends §668.43, §668.44, §668.46, §668.47, §668.72, and adds Appendix E.
- **Student Assistance General Provisions**—Appeals of Cohort Default Rates
  Amends §668.17 (Interim Final with comments invited)
- **Federal Family Education Loan Program**—(Final Rule)
  Amends §682.202, §682..208, §682..402, §682..410, §682..411, and §682.414

We will incorporate these changes in the next edition of the compilation of regulations.

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PART 86-DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A-General

Subpart B-Institutions of Higher Education

Subpart C-State and Local Educational Agencies

Subpart D-Response and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

Subpart E-Appeal Procedures

Authority: 20 U.S.C. 1145g, 3224a.

Subpart A-General

Sec. 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

The purpose of the Drug-Free Schools and Campuses Regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which adds section 1213 to the Higher Education Act and section 5145 to the Drug-Free Schools and Communities Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA)

must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g, 3224a).

Sec. 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include—

(a) All programs administered by the Department of Education under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance; and

(b) All programs administered by any other Federal agency under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

(a) An IHE, SEA, or LEA shall adopt and implement a drug prevention program as described in Sec. 86.100 for IHEs, and Secs. 86.200 and 86.201 for SEAs and LEAs, to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE, SEA, or LEA shall provide a written certification that it has adopted and implemented the drug prevention program described in Sec. 86.100 for IHEs, and Secs. 86.200 and 86.201 for SEAs and LEAs.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.4 What are the procedures for submitting a drug prevention program certification?

(a) IHE drug prevention program certification. An IHE shall submit to the Secretary the drug prevention program certification required by Sec. 86.3(b).

(b) SEA drug prevention program certification. An SEA shall submit to the Secretary the drug prevention program certification required by Sec. 86.3(b).

(c) LEA drug prevention program.

(1) The SEA shall develop a drug prevention program certification form and a schedule for submission of the certification by each LEA within its jurisdiction.

(2) An LEA shall submit to the SEA the drug prevention program certification required by Sec. 86.3(b).

(3)(i) The SEA shall provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications and certify that all other LEAs in the State have submitted drug prevention program certifications to the SEA.

(ii) The SEA shall submit updates to the Secretary so that the list of LEAs described in paragraph (c)(3)(i) of this section is accurate at all times.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

(a) An IHE, SEA, or LEA that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE, SEA, or LEA receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE, SEA, or LEA is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE, SEA, or LEA has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE, SEA, or LEA until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE, SEA, or LEA establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE, SEA, or LEA that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that—

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3)(i) An IHE or SEA shall submit a request for an extension to the Secretary.

(ii)(A) An LEA shall submit any request for an extension to the SEA.

(B) The SEA shall transmit any such request for an extension to the Secretary.

(C) The SEA may include with the LEA's request a recommendation as to whether the Secretary should approve it.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.7 What definitions apply to this part?

(a) Definitions in the Drug-Free Schools and Communities Act. The following terms used in this part are defined in the Act:

Drug abuse education and prevention
Illicit drug use

(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR part 77:

Department
EDGAR
Local educational agency
Secretary
State educational agency.

(c) Other definitions. The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE, SEA, or LEA that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE, SEA, or LEA will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means—

(1) An institution of higher education, as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education, as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and

(4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart B-Institutions of Higher Education

Sec. 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of the length of the student's program of study, of—

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(6) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

Sec. 86.101 What review of IHE drug prevention programs does the Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

Sec. 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under Sec. 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

Sec. 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by Sec. 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by Sec. 86.100(a) as well as the results of the biennial review required by Sec. 86.100(b).

(b)(1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880-0552)

(Authority: 20 U.S.C. 1145g)

Subpart C-State and Local Educational Agencies

Sec. 86.200 What must the SEA's and LEA's drug prevention program for students include?

The SEA's and LEA's program for all students must, at a minimum, include the following:

(a) Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA or LEA, from early childhood level through grade 12.

(b) A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

(c) Standards of conduct that are applicable to students in all the SEA's and LEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

(d) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct required by paragraph (c) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(e) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

(f) A requirement that all parents and students be given a copy of the standards of conduct required by paragraph (c) of this section and the statement of disciplinary sanctions described in paragraph (d) of this section.

(g) Notification to parents and students that compliance with the standards of conduct required by paragraph (c) of this section is mandatory.

(h) A biennial review by the SEA or LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (d) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Sec. 86.201 What must the SEA's and LEA's drug prevention program for employees include?

The SEA's and LEA's program for all employees must, at a minimum, include the following:

(a) Standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

(b) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct required by paragraph (a) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(c) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

(d) A requirement that employees be given a copy of the standards of conduct required by paragraph (a) of this section and the statement of disciplinary sanctions described in paragraph (b) of this section.

(e) Notification to employees that compliance with the standards of conduct required by paragraph (a) of this section is mandatory.

(f) A biennial review of the SEA and LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (b) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Sec. 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

(a)(1) An SEA shall annually review a representative sample of LEA programs.

(2) If an SEA finds, as a result of its annual review, that an LEA has failed to implement its program or consistently enforce its disciplinary sanctions, the SEA shall submit that information, along with the findings of its review, to the Secretary within thirty (30) days after completion of the review.

(b) The Secretary may annually select a representative sample of SEA programs for review.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Sec. 86.203 What is required of an SEA or LEA that is selected for review?

(a) If the Secretary selects an SEA for review under Sec. 86.202(b), the SEA shall provide the Secretary access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(b) If the SEA selects an LEA for review under Sec. 86.202(a), the LEA shall provide the SEA access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 3224a)

Sec. 86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

(a)(1) Each SEA that provides the drug prevention program certification shall, upon request, make available to the Secretary and the public full information about the elements of its drug prevention program, including the results of its biennial review required by Secs. 86.200(h) and 86.201(F).

(2) The SEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the SEA's compliance with the certification.

(b)(1) Each LEA that provides the drug prevention program certification shall, upon request, make available to the Secretary, the SEA, and the public full information about the elements of its program, including the results of its biennial review required by Secs. 86.200(h) and 86.201(f).

(2) The LEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the LEA's compliance with the certification.

(c)(1) Each SEA or LEA shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraphs (a) and (b) of this section.

(ii) Any other records related to the SEA's or LEA's compliance with the certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the SEA or LEA shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Subpart D-Responses and Sanctions Issued or Imposed by the Secretary for violations by an IHE, SEA, or LEA

Sec. 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

An IHE, SEA, or LEA violates this part by—

(a) Receiving any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification in accordance with Sec. 86.3(b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE, SEA, or LEA to—

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under Sec. 86.100(a)(1) or by an SEA or LEA under Secs. 86.200(c) and 86.201(a).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

(a) If an IHE, SEA, or LEA violates its certification, the Secretary may issue a response to the IHE, SEA, or LEA. A response may include, but is not limited to—

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE, SEA, or LEA into full compliance with this part as soon as feasible.

(b) If an IHE, SEA, or LEA receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, SEA, or LEA, including—

(1) Repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that—

(i)(A) Except as specified in paragraph (b)(2)(ii) of this section, ends an IHE's, SEA's, or LEA's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE, SEA, or LEA from making any new obligations against Federal funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE, SEA, or LEA in writing, through site visits, or by other means.

(b) The IHE, SEA, or LEA shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE, SEA, or LEA in writing of—

(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE, SEA, or LEA may submit written comments to the Secretary on the determination under paragraph (a)(1) of this section and the intended response under paragraph (a)(2) of this section within 30 days after the date the IHE, SEA, or LEA receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE, SEA, or LEA, the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE, SEA, or LEA shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE, SEA, or LEA does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE, SEA, or LEA in accordance with the procedures in Sec. 86.304.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance by sending the IHE, SEA, or LEA a notice by certified mail with return receipt requested. This notice—

(1) Informs the IHE, SEA, or LEA of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate—

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE, SEA, or LEA must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent, and

(3) Informs the IHE, SEA, or LEA that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE, SEA, or LEA receives the notice of intent described in this paragraph—

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place; or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's, SEA's, or LEA's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE, SEA, or LEA contends need not be repaid.

(b) If the IHE, SEA, or LEA does not request a hearing but submits written material—

(1) The IHE, SEA, or LEA receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE, SEA, or LEA in writing whether—

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart E-Appeal Procedures

Sec. 86.400 What is the scope of this subpart?

(a) The procedures in this subpart are the exclusive procedures governing appeals of decisions by a designated Department official to demand the repayment of Federal financial assistance or terminate the eligibility of an IHE, SEA, or LEA to receive some or all forms of Federal financial assistance for violations of this part.

(b) An Administrative Law Judge (ALJ) hears appeals under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.401 What are the authority and responsibility of the ALJ?

(a) The ALJ regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) The ALJ is not authorized to issue subpoenas.

(c) The ALJ takes whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The scope of the ALJ's review is limited to determining whether—

(1) The IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or

(2) The IHE, SEA, or LEA violated its certification.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.402 Who may be a party in a hearing under this subpart?

(a) Only the designated Department official and the IHE, SEA, or LEA that is the subject of the proposed termination or recovery of Federal financial assistance may be parties in a hearing under this subpart.

(b) Except as provided in this subpart, no person or organization other than a party may participate in a hearing under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.403 May a party be represented by counsel?

A party may be represented by counsel.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.404 How may a party communicate with an ALJ?

(a) A party may not communicate with an ALJ on any fact at issue in the case or on any matter relevant to the merits of the case unless the other party is given notice and an opportunity to participate.

(b)(1) To obtain an order or ruling from an ALJ, a party shall make a motion to the ALJ.

(2) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(3) If a party files a written motion, the party shall do so in accordance with Sec. 86.405.

(4) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(5) The date of service of a motion is determined by the standards for determining a filing date in Sec. 86.405(d).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery or by mail through the U.S. Postal Service.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.406 What must the ALJ do if the parties enter settlement negotiations?

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or for the parties to obtain approval of a settlement agreement, the ALJ grants the stay.

(b) The following are not admissible in any proceeding under this part:

(1) Evidence of conduct during settlement negotiations.

(2) Statements made during settlement negotiations.

(3) Terms of settlement offers.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.407 What are the procedures for scheduling a hearing?

(a) If the IHE, SEA, or LEA requests a hearing by the time specified in Sec. 86.403(a)(3), the designated Department official sets the date and the place.

(b)(1) The date is at least 15 days after the designated Department official receives the request and no later than 45 days after the request for hearing is received by the Department.

(2) On the motion of either or both parties, the ALJ may extend the period before the hearing is scheduled beyond the 45 days specified in paragraph (b)(1) of this section.

(c) No termination takes effect until after a hearing is held and a decision is issued by the Department.

(d) With the approval of the ALJ and the consent of the designated Department official and the IHE, SEA, or LEA, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE, SEA, or LEA.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE, SEA, or LEA. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE, SEA, or LEA on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, SEA, or LEA, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with Sec. 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.

(3) The ALJ bases findings of fact only on evidence in the hearing record and on matters given judicial notice.

(b)(1) The ALJ's decision is the final decision of the agency. However, the Secretary reviews the decision on request of either party, and may review the decision on his or her own initiative.

(2) If the Secretary decides to review the decision on his or her own initiative, the Secretary informs the parties of his or her intention to review by written notice sent within 15 days of the Secretary's receipt of the ALJ's decision.

(c)(1) Either party may request review by the Secretary by submitting a brief or written material to the Secretary within 20 days of the party's receipt of the ALJ's decision. The submission must explain why the decision of the ALJ should be modified, reversed, or remanded. The other party shall respond within 20 days of receipt of the brief or written materials filed by the opposing party.

(2) Neither party may introduce new evidence on review.

(d) The decision of the ALJ ordering the repayment of Federal financial assistance or terminating the eligibility of an IHE, SEA, or LEA does not take effect pending the Secretary's review.

(e)(1) The Secretary reviews the ALJ's decision considering only evidence introduced into the record.

(2) The Secretary's decision may affirm, modify, reverse or remand the ALJ's decision and includes a statement of reasons for the decision.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.411 What are the procedures for requesting reinstatement of eligibility?

(a)(1) An IHE, SEA, or LEA whose eligibility to receive any or all forms of Federal financial assistance has been terminated may file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

(2) In order to be reinstated, the IHE, SEA, or LEA must demonstrate that it has corrected the violation or violations on which the termination was based and that it has met any repayment obligation imposed upon it under Sec. 86.301(b)(1) of this part.

(b) In addition to the requirements of paragraph (a) of this section, the IHE, SEA, or LEA shall comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Appendix A

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of Federal trafficking (i.e., distribution) penalties for substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). Persons interested in acquiring the entire publication or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402. This appendix also contains a description prepared by the Department of Justice of Federal penalties and sanctions for illegal possession of a controlled substance. Legal sanctions for the unlawful possession or distribution of alcohol are found primarily in State statutes.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirements in Sec. 86.100(a)(2) of these regulations relating to the distribution to students and employees of a description of the applicable legal sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. In future years, IHEs should distribute the most current editions of these documents that are available.

CSA	PENALTY 2nd Offense	PENALTY 1st Offense	Quantity	DRUG	Quantity	PENALTY 1st Offense	PENALTY 2nd Offense
I and II	Not less than 10 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $4 million individual, $10 million other than individual.	Not less than 5 years. Not more than 40 years. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $2 million individual, $5 million other than individual.	10-99 gm or 100-999 gm mixture	METHAMPHETAMINE	100 gm or more or 1 kg[1] or more mixture	Not less than 10 years. Not more than life. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $4 million individual. $10 million other than individual.	Not less than 20 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $8 million individual. $20 million other than individual.
			100-999 gm mixture	HEROIN	1 kg or more mixture		
			500-4,999 gm mixture	COCAINE	5 kg or more mixture		
			5-49 gm mixture	COCAINE BASE	50 gm or more mixture		
			0-99 gm or 100-999 gm mixture	PCP	100 gm or more or 1 kg or more mixture		
			1-10 gm mixture	LSD	10 gm or more mixture		
			40-399 gm mixture	FENTANYL	400 gm or more mixture		
			10-99 gm mixture	FENTANYL ANALOGUE	100 gm or more mixture		

CSA	Drug	Quantity	First Offense	Second Offense
I and II	Others[2]	Any	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual. $5 million not individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual. $10 million not individual.
III	All	Any	Not more than 5 years. Fine not more than $250,000 individual. $1 million not individual.	Not more than 10 years. Fine not more than $500,000 individual. $2 million not individual.
IV	All	Any	Not more than 3 years. Fine not more than $250,000 individual. $1 million not individual.	Not more than 6 years. Fine not more than $500,000 individual. $2 million not individual.
V	All	Any	Not more than 1 year. Fine not more than $100,000 individual. $250,000 not individual.	Not more than 2 years. Fine not more than $200,000 individual. $500,000 not individual.

[1] Law as originally enacted states 100 gm. Congress requested to make technical correction to 1 kg.

[2] Does not include marijuana, hashish, or hash oil. (See separate chart.)

Federal Trafficking Penalties - Marijuana

As of November 18, 1988

Quantity	Description	First Offense	Second Offense
1,000 kg or more; or 1,000 or more plants	Marijuana Mixture containing detectable quantity*	Not less than 10 years, not more than life. If death or serious injury, not less than 20 years, not more than life. Fine not more than $4 million individual, $10 million other than individual.	Not less than 20 years, not more than life. If death or serious injury, not less than life. Fine not more than $8 million individual, $20 million other than individual.
100 kg to 1,000 kg; or 100-999 plants	Marijuana Mixture containing detectable quantity*	Not less than 5 years, not more than 40 years. If death or serious injury, not less than 20 years, not more than life. Fine not more than $2 million individual, $5 million other than individual.	Not less than 10 years, not more than life. If death or serious injury, not less than life. Fine not more than $4 million individual, $10 million other than individual.
50 to 100 kg	Marijuana	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual, $5 million other than individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual, $10 million other than individual.
10 to 100 kg	Hashish		
1 to 100 kg	Hashish Oil		
50-99 plants	Marijuana		
Less than 50 kg	Marijuana	Not more than 5 years. Fine not more than $250,000, $1 million other than individual.	Not more than 10 years. Fine $500,000 individual, $2 million other than individual.
Less than 10 kg	Hashish		
Less than 1 kg	Hashish Oil		

*Includes Hashish and Hashish Oil

(Marijuana is a Schedule I Controlled Substance)

Federal Penalties and Sanctions for Illegal Possession of a Controlled Substance

21 U.S.C. 844(a)

1st conviction: Up to 1 year imprisonment and fined at least $1,000 but not more than $100,000, or both.

After 1 prior drug conviction: At least 15 days in prison, not to exceed 2 years and fined at least $2,500 but not more than $250,000, or both.

After 2 or more prior drug convictions: At least 90 days in prison, not to exceed 3 years and fined at least $5,000 but not more than $250,000, or both.

Special sentencing provisions for possession of crack cocaine: Mandatory at least 5 years in prison, not to exceed 20 years and fined up to $250,000, or both, if:

(a) 1st conviction and the amount of crack possessed exceeds 5 grams.

(b) 2nd crack conviction and the amount of crack possessed exceeds 3 grams.

(c) 3rd or subsequent crack conviction and the amount of crack possessed exceeds 1 gram.

21 U.S.C. 853(a)(2) and 881(a)(7)

Forfeiture of personal and real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than 1 year imprisonment. (See special sentencing provisions re: crack.)

21 U.S.C. 881(a)(4)

Forfeiture of vehicles, boats, aircraft or any other conveyance used to transport or conceal a controlled substance.

21 U.S.C. 844a

Civil fine of up to $10,000 (pending adoption of final regulations).

21 U.S.C. 853a

Denial of Federal benefits, such as student loans, grants, contracts, and professional and commercial licenses, up to 1 year for first offense, up to 5 years for second and subsequent offenses.

18 U.S.C. 922(g)

Ineligible to receive or purchase a firearm.

Miscellaneous

Revocation of certain Federal licenses and benefits, e.g. pilot licenses, public housing tenancy, etc., are vested within the authorities of individual Federal agencies.

Note: These are only Federal penalties and sanctions. Additional State penalties and sanctions may apply.

Appendix B

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of health risks associated with substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). The appendix also includes a summary of health risks associated with alcohol, as described in *What Works: Schools Without Drugs* (1989 Edition), a Department of Education publication.

Persons interested in acquiring the publications or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402, for *Drugs of Abuse*; and *Schools Without Drugs*, Pueblo, CO 81009, for *What Works: Schools Without Drugs*.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirement in Sec. 86.100(a)(3) of these regulations relating to the distribution of the health risks associated with the use of illicit drugs and the abuse of alcohol. The Secretary considers this information as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. If an IHE distributes this information in future years, it should use the most current editions of *Drugs of Abuse* and *Schools Without Drugs* that are available.

Controlled Substances - Uses and Effects

DRUGS	CSA SCHEDULES	TRADE OR OTHER NAMES	MEDICAL USES	DEPENDENCE Physical	DEPENDENCE Psychological	TOLERANCE	DURATION (Hours)	USUAL METHODS OF ADMINISTRATION	POSSIBLE EFFECTS	EFFECTS OF OVERDOSE	WITHDRAWAL SYNDROME
NARCOTICS											
Opium	II III V	Dover's Powder, Paregoric, Parepectolin	Analgesic, Antidiarrheal	High	High	Yes	3-6	Oral, smoked	Euphoria, drowsiness, respiratory depression, constricted pupils, nausea	Slow and shallow breathing, clammy skin, convulsions, coma, possible death	Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, cramps, nausea, chills, and sweating
Morphine	II III	Morphine, MS-Contin, Roxanol, Roxanol-SR	Analgesic, Antitussive	High	High	Yes	3-6	Oral, smoked, injected			
Codeine		Tylenol w/Codeine, Empirin w/Codeine, Robitussan A-C, Fiorinal w/Codeine	Analgesic, Antitussive	Moderate	Moderate	Yes	3-6	Oral, injected			
Heroin	I	Diacetylmorphine, Horse, Smack	None	High	High	Yes	3-6	Injected, sniffed, smoked			
Hydromorphone	II	Dilaudid	Analgesic	High	High	Yes	3-6	Oral, injected			
Meperidine (Pethidine)	II	Demerol, Mepergan	Analgesic	High	High	Yes	3-6	Oral, injected			
Methadone	II	Dolophine, Methadone, Methadose	Analgesic	High	High-Low	Yes	12-24	Oral, injected			
Other Narcotics	I II III IV V	Numorphan, Percodan, Percocet, Tylox, Tussionex, Fentanyl, Darvon, Lomotil, Talwin[2]	Analgesic, antidiarrheal, antitussive	High-Low	High-Low	Yes	Variable	Oral, injected			
DEPRESSANTS											
Chloral Hydrate	IV	Noctec	Hypnotic	Moderate	Moderate	Yes	5-8	Oral	Slurred speech, disorientation, drunken behavior without odor of alcohol	Shallow respiration, clammy skin, dilated pupils, weak and rapid pulse, coma, possible death	Anxiety, insomnia, tremors, delirium, convulsions, possible death
Barbiturates	II III IV	Amytal, Butisol, Fiorinal, Lotusate, Nembutal, Seconal, Tuinal, Phenobarbital	Anesthetic, anticonvulsant, sedative, hypnotic, veterinary euthanasic agent	High-Mod.	High-Mod.	Yes	1-16	Oral			
Benzodiazepines	IV	Ativan, Dalmane, Diazepam, Librium, Xanax, Serax, Valium, Tranxexe, Verstran, Versed, Halcion, Paxipam, Restoril	Antianxiety, anticonvulsant, sedative, hypnotic	Low	Low	Yes	4-8	Oral			
Methaqualone	I	Quaalude	Sedative, hypnotic	High	High	Yes	4-8	Oral			
Glutethimide	III	Doriden	Sedative, hypnotic	High	Moderate	Yes	4-8	Oral			
Other Depressants	III IV	Equanil, Miltown, Noludar, Placidyl, Valmid	Antianxiety, sedative, hypnotic	Moderate	Moderate	Yes	4-8	Oral			

Controlled Substances - Uses and Effects

Drugs	CSA Schedules	Trade or Other Names	Medical Uses	Dependence: Physical	Dependence: Psychological	Tolerance	Duration (Hours)	Usual Methods of Administration	Possible Effects	Effects of Overdose	Withdrawal Syndrome
STIMULANTS											
Cocaine[1]	II	Coke, Flake, Snow, Crack	Local anesthetic	Possible	High	Yes	1-2	Sniffed, smoked, injected	Increased alertness, excitation, euphoria, increased pulse rate and blood pressure, insomnia, loss of appetite	Agitation, increase in body temperature, hallucinations, convulsions, possible death	Apathy, long periods of sleep, irritability, depression, disorientation
Amphetamines	II	Biphetamine, Delcobase, Desoxyn, Dexedrine, Obetrol	Attention deficit disorders, narcolepsy, weight control	Possible	High	Yes	2-4	Oral, injected			
Phenmetrazine	II	Preludin	Weight control	Possible	High	Yes	2-4	Oral, injected			
Methylphenidate	II	Ritalin	Attention deficit disorders, narcolepsy	Possible	Moderate	Yes	2-4	Oral, injected			
Other Stimulants	III IV	Adipex, Cylert, Didrex, Ionamin, Mellat, Plagine, Sanorex, Tenuate, Taperul, Prelu-2	Weight control	Possible	High	Yes	2-4	Oral, injected			
HALLUCINOGENS											
LSD	I	Acid, Microdot	None	None	Unknown	Yes	8-12	Oral	Illusions and hallucinations, poor perception of time and distance	Longer, more intense "trip" episodes, psychosis, possible death	Withdrawal syndrome not reported
Mescaline and Peyote	I	Mexc, Buttons, Cactus	None	None	Unknown	Yes	8-12	Oral			
Amphetamine Variants	I	2.5-DMA, PMA, STP, MDA, MDMA, TMA, DOM, DOB	None	Unknown	Unknown	Yes	Variable	Oral, injected			
Phencyclidine	II	PCP, Angel Dust, Hog	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Phencyclidine Analogues	I	PCE, PCPy, TCP	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Other Hallucinogens	I	Buloterine, Ibogaine, DMT, DET, Psilocybin, Psilocyn	None	None	Unknown	Possible	Variable	Smoked, oral, injected, sniffed			
CANNABIS											
Marijuana	I	Pot, Acapulco Gold, Grass, Reefer, Sinsemilla, Thai Sticks	None	Unknown	Moderate	Yes	2-4	Smoked, oral	Euphoria, relaxed inhibitions, increased appetite, disoriented behavior	Fatigue, paranoia, possible psychosis	Insomnia, hyperactivity, and decreased appetite occasionally reported
Tetrahydrocannabinol	I II	THC, Marinol	Cancer chemotherapy, antinauseant	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish	I	Hash	None	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish Oil	I	Hash Oil	None	Unknown	Moderate	Yes	2-4	Smoked, oral			

[1] Designated a narcotic under the GSA. [2] Not designated a narcotic under the GSA.

APPENDIX B

Alcohol

Effects

Alcohol consumption causes a number of marked changes in behavior. Even low doses significantly impair the judgement and coordination required to drive a car safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate doses of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high doses of alcohol cause marked impairments in higher mental functions, severely altering a person's ability to learn and remember information. Very high doses cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower doses of alcohol will produce the effects just described.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life-threatening. Long-term consumption of large quantities of alcohol, particularly when combined with poor nutrition, can also lead to permanent damage to vital organs such as the brain and the liver.

Mothers who drink alcohol during pregnancy may give birth to infants with fetal alcohol syndrome. These infants have irreversible physical abnormalities and mental retardation. In addition, research indicates that children of alcoholic parents are at greater risk than other youngsters of becoming alcoholics.

Appendix C-Analysis of Comments and Responses

Note: This appendix will not be codified in the Code of Federal Regulations.

In response to the Secretary's invitation in the NPRM, 94 parties submitted comments on the proposed regulations. An analysis of the comments follows:

Subpart A-General

Sec. 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

Entities Affected by These Regulations

Comments: A commenter asked how community-based organizations are affected by the Drug-Free Schools and Campuses regulations.

Discussion: The Act requires only IHEs, SEAs, and LEAs to submit the certification; thus, community-based organizations are not required to submit the certification. If a community-based organization provides Federal funds to IHEs, SEAs, or LEAs, the organization should determine whether or not the IHE, SEA, or LEA has submitted a drug prevention program certification before providing Federal funds. See the discussion in this appendix under Sec. 86.3 explaining how the Department will identify those IHEs, SEAs, and LEAs that have not submitted certifications.

Changes: None.

Applicability of These Requirements to Private Elementary and Secondary Schools

Comments: Several commenters asked whether nonpublic schools are required to submit a drug prevention program certification. Commenters questioned the applicability of the Drug-Free Schools and Campuses regulations to nonpublic schools; one commenter had difficulty reconciling the absence of a requirement for nonpublic schools to submit a drug prevention program certification with the requirement found in some Federal programs that an SEA or LEA must provide for the equitable participation of pupils from nonpublic schools. One commenter suggested that the regulations include a requirement for the equitable participation of nonpublic school pupils in the SEA's or LEA's drug prevention program.

Discussion: The statute identifies IHEs, SEAs, and LEAs as the entities that must submit certification of a drug prevention program in order to remain eligible to receive funds or any other form of financial assistance under any Federal program. Definitions of these entities can be found in Sec. 86.7 of the regulations. Certification requirements apply only to IHEs, SEAs, and LEAs.

SEAs and LEAs may allow nonpublic school pupils to participate in the SEA's or LEA's age-appropriate, developmentally based drug and alcohol education and prevention programs required under Sec. 86.200(a) of the regulations. To the extent those programs are funded under a Federal program that requires the equitable participation of nonpublic school pupils, such as part B of the Drug-Free Schools and Communities Act of 1986, SEAs and LEAs must provide for the equitable participation of nonpublic school pupils in projects and activities supported by that Federal program. Furthermore, to the extent that an SEA or LEA conducts a Federally funded drug prevention program or any other Federal program that requires the equitable participation of pupils from nonpublic schools (e.g., chapter 1 of title I of the Elementary and Secondary Education Act), participating pupils from nonpublic schools will be subject to the standards of conduct, disciplinary sanctions, and other elements of the SEA's or LEA's drug prevention program (Sec. 86.200 (b) through (h)) during periods of time when the pupils are under the direct supervision and control of the SEA or LEA. Disciplinary sanctions imposed upon nonpublic school pupils by SEAs or LEAs must be limited to the pupil's participation in the SEA or LEA program.

Changes: None.

Federal Control Over Curriculum

Comment: Commenters expressed concern that in implementing Public Law 101-226 the Department not have any direct involvement in curriculum decisions at the local school level.

Discussion: Public Law 101-226 specifically provides that its statutory requirements apply notwithstanding the requirements in section 432 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232a) and section 103(b) of the Department of Education Organization Act (20 U.S.C. 3403(b)), which prohibit the Secretary from exercising "any direction, supervision, or control" over curriculum decisions at the local school level in connection with the administration of Federal education programs. Section 86.200(a) requires LEAs to adopt and implement a drug prevention program but does

not prescribe a particular drug prevention curriculum. Instead, local school districts are afforded broad discretion in designing a drug prevention program that responds to local needs as determined by local education officials.

Changes: None.

Sec. 86.4 What are the procedures for submitting a drug prevention program certification?

Transmission of Certification Form

Comment: A commenter asked if the Department will permit electronic transmissions of drug prevention program certifications.

Discussion: The Department does not currently have the resources to permit electronic transmission of drug prevention program certifications. The Department will mail the certification form to IHEs and SEAs in August, 1990; IHEs and SEAs should submit that form by mail or courier service by the suggested date of September 4, 1990 in order to ensure that there will be no interruption in the flow of Federal financial assistance. In order to process the more than 9,000 certifications that the Department expects to receive from IHEs, the IHE certification will be bar coded so that it is machine readable. The Secretary will consider the possibility of electronic transmission of certifications in the future as technological developments permit.

Changes: None.

One-Time Submission of Certifications

Comment: A commenter suggested that the regulations state explicitly that an IHE, SEA, or LEA is required to submit a drug prevention program certification only once.

Discussion: Generally, each IHE, SEA, or LEA is required to submit a drug prevention program certification only once. The drug prevention program certification forms for IHEs and SEAs do not limit the certification to a particular school year or other period of time. There are circumstances, however, under which a new certification may be required, such as change of ownership of an IHE or division or consolidation of an LEA. The Secretary believes that it is preferable to address the issue of new certifications in guidance to the affected entities rather than in the regulations.

Changes: None.

Relationship of Certification to Funding Under the Drug-Free Schools and Communities Act

Comment: One commenter understood the regulations to require resubmission of a drug prevention program certification if an LEA does not apply for funding under the Drug-Free Schools and Communities Act and suggested that it would be unfair to tie the receipt of Federal monies to the completion of an application for funds under Part B of the Drug-Free Schools and Communities Act.

Discussion: Under these regulations, receipt of any Federal funds is tied to the submission of a drug prevention program certification, not to an application for funds under the Drug-Free Schools and Communities Act. An LEA is not required under these regulations to fund its drug prevention program from Federal sources such as Part B of the Drug-Free Schools and Communities Act. Consequently, an LEA is not required to resubmit a drug prevention program certification if the LEA chooses not to apply for funding under the Drug-Free Schools and Communities Act.

Changes: None.

Informing Other Federal Agencies of Which IHEs, SEAs, and LEAs Have Submitted Certifications

Comment: A commenter inquired whether the certification requirement applied to receipt of funds from Federal agencies other than the Department of Education and, if so, whether the Department would "administer" the certifications for other Federal agencies. Several commenters wanted to know how the Department will inform other Federal agencies of the names of the IHEs, SEAs, and LEAs that have submitted a drug prevention program certification or been granted an extension of time to submit the certification.

Discussion: The certification requirement is a statutory requirement applying to receipt of all Federal financial assistance, not just Federal financial assistance administered by the Department. Consistent with Public Law 101-228, the Department will send out the certification form to all IHEs and SEAs eligible to participate in its programs.

Rather than listing those IHEs, SEAs, and LEAs that have submitted drug prevention program certifications or been granted extensions of time to submit those certifications, the Department will submit a list of those entities that have *not* submitted a certification or received an extension to the General Services Administration for inclusion in its "List of Parties Excluded from Federal Procurement or Nonprocurement Programs." Unless an IHE, SEA, or LEA appears on this list, Federal agencies and other interested parties can consider the IHE, SEA, or LEA eligible, for the purposes of the Drug-Free Schools and Campuses regulations, to receive Federal financial assistance.

Changes: None.

Relationship to Drug-Free Workplace and Other Certifications

Comments: A commenter suggested that the Department consider developing a single database of required certifications, and sending all certification forms to each IHE, SEA, or LEA at one time, rather than requiring separate submissions. Another commenter wanted amendments to Sec. 86.1 to create a consolidation of these regulations and the Drug-Free Workplace Act certification. Several commenters sought clarification whether compliance with these regulations would supersede or replace Drug-Free Workplace Act requirements.

Discussion: The Department has been attempting, where possible, to consolidate certifications. For example, the Drug-Free Workplace certification for use beginning in fiscal year 1991 is now combined on one form with the Lobbying and the Debarment and Suspension certifications.

Because of the differences between the requirements of Public Law 101-226 and its regulations and the requirements of the Drug-Free Workplace Act and its regulations, it is not practicable to combine these two certifications. Moreover, compliance with the Drug-Free

Schools and Campuses regulations does not supersede or replace compliance with the Drug-Free Workplace Act.

The certification requirement in these Drug-Free School and Campuses regulations applies only to IHEs, SEAs, and LEAs. The certification requirement in the Drug-Free Workplace Act applies not only to IHEs, SEAs, and LEAs but also to all recipients of Federal grants, including individuals.

The Drug-Free Workplace Act prohibits any Federal department or agency from making a grant to an institutional grantee unless the grantee submits a certification that it will provide a drug-free workplace. The Drug-Free Workplace Act also prohibits any Federal department or agency from making a grant to an individual in the absence of a required certification. Final regulations for the Drug-Free Workplace Act were issued by Federal agencies on May 25, 1990 (55 FR 21681).

Under the Drug-Free Workplace Act, the certification submitted by a grantee (other than an individual) relates to conduct in the grantee's workplace and thus pertains only to its employees. Virtually the only students to which the Drug-Free Workplace Act certification requirement applies are Pell grant recipients who, as individuals receiving a Federal grant, are required to certify that they will not engage in any illicit drug-related activity during the period of their Pell grant. These Drug-Free Schools and Campuses regulations, on the other hand, apply to students as well as employees insofar as an IHE, SEA, and LEA is required to develop and implement a drug prevention program for both students and employees. However, under these Drug-Free Schools and Campuses regulations, individual students are not required to submit a certification: the certification requirement applies only to IHEs, SEAs, and LEAs.

Employee use of alcohol is not addressed in the Drug-Free Workplace Act. The certification under these Drug-Free Schools and Campuses regulations relates to the illicit use of alcohol as well as drugs.

Under the Drug-Free Workplace Act, the certification must be submitted only by an entity or individual that receives a grant or contract directly from the Federal government: the certification is not required of subgrantees or contractors under a grant. Under these Drug-Free Schools and Campuses regulations the certification requirements apply whether the agency or institution is applying directly to the Federal government, or is applying for a subgrant or contract from a grantee that has received a Federal grant, such as an LEA applying to an SEA for Federal funds.

The Drug-Free Workplace Act requires an IHE, SEA, or LEA to establish an on-going drug-free awareness program with certain specified components, notify employees of certain conditions of employment, including notification of the employer in writing by an employee convicted of a drug-related offense, and take certain specified actions if an employee is convicted of a drug-related offense. In contrast, these Drug-Free Schools and Campuses regulations require annual distribution to students and employees of certain information, and the formulation of standards of conduct, without specifying that certain actions must be taken if an employee or student is convicted of a drug- and alcohol-related offense.

Because of these separate requirements in each statute, compliance with one cannot be equated with compliance with the other. Moreover, the Drug-Free Workplace certification must be submitted with each application for a grant or contract; the Drug-Free Schools and Campuses certification is generally a one-time certification. Thus, it is not possible to consolidate the Drug-Free Workplace and the Drug-Free Schools and Campuses certifications.

Changes: None.

Responsibility To Notify LEAs of Requirements

Comment: One commenter suggested that the regulations should include a requirement that LEAs be notified of their responsibilities under the statute and regulations.

Discussion: The Secretary agrees that LEAs should be notified of their responsibilities under the statute and regulations. Since the statute makes SEAs responsible for administering LEA certification, the Secretary believes that SEAs should, as a matter of course, notify LEAs of their responsibilities under the statute and regulations.

Changes: None.

Requirement for SEA To Develop Forms and Procedures for LEA Certifications

Comments: One commenter suggested that the requirement for SEAs to develop forms and procedures for LEA certification should be dropped and that SEAs should not be required to identify LEAs that have not submitted certification forms. The commenter believed that these requirements result in an unnecessarily early submission of certification by LEAs and, further, that the SEA reporting process does not provide for possible reporting errors such as listing of an LEA as not having submitted a certification when in fact the LEA had done so, or failure of an SEA to submit its own certification after having received proper certifications from LEAs. The commenter would rely upon State review to discover whether LEAs have a program that fulfills the statutory requirements.

Discussion: In order to remain eligible to receive funds or any other form of financial assistance under any Federal program, an LEA must submit a certification to the SEA that it has adopted and implemented a drug prevention program. The Secretary needs to know which LEAs have not certified in order to ensure that they do not receive Federal financial assistance from any source after October 1, 1990. The Secretary believes that the most efficient means to accomplish this is to require SEAs to identify LEAs that have not submitted certification forms. Under this procedure, an earlier submission date for LEAs is unavoidable.

Waiting for an SEA review to discover which LEAs have not submitted a drug prevention program certification increases the likelihood that Federal financial assistance will be provided to ineligible LEAs and could result in the imposition of disciplinary sanctions on LEAs, up to and including the return of all Federal funds received during the period in which the LEA was not eligible to receive Federal financial assistance.

Prior to declaring an SEA or LEA ineligible to receive funds or any other form of financial assistance under any Federal program, the Secretary intends to verify whether the SEA or LEA has submitted a certification. The SEA reporting process is designed to assist the Secretary in identifying SEAs and LEAs that have not submitted the certification.

Changes: None.

Sec. 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

Receipt of Federal Funds

Comment: A commenter sought clarification on the effect of an IHE's, SEA's, or LEA's failure to submit a drug prevention program certification, and asked whether ineligibility to "receive" Federal funds means the same thing as inability to obligate funds.

Discussion: The effect of an IHE's, SEA's, or LEA's loss of eligibility to receive Federal funds, including the ability to obligate funds, is governed by the applicable program statute and regulations. For example, the effect of an IHE's ineligibility to receive funds under the Federal student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended, is governed by the Student Assistance General Provisions regulations in 34 CFR 668.94.

Changes: None.

Definition of Federal Financial Assistance

Comment: A commenter requested a description of the forms of Federal financial assistance for which an IHE, SEA, or LEA that fails to submit a drug prevention program might become ineligible. Another commenter suggested that the Department should clarify that an IHE's drug prevention program is an institution-wide responsibility because these rules affect all possible Federal funds received by an IHE, not just Federal student financial assistance programs, and all students and employees. The commenter was concerned that IHEs might delegate compliance with these regulations to their financial aid offices.

Discussion: A definition of Federal financial assistance is unnecessary because Public Law 101-226 applies to all forms of Federal financial assistance. Some examples are grants, contracts, participation in federally financed or guaranteed loan programs, and participation in school breakfast or lunch programs. The Secretary agrees with the second commenter that in view of the broad applicability of these requirements, implementation of the drug prevention program must be institution-wide. However, the Secretary believes that each IHE should determine which offices within the IHE should have responsibility for implementation.

Changes: None.

Sec. 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

Timing of Submission of Drug Prevention Program Certification

Comments: Numerous commenters expressed concerns about the October 1, 1990, effective date of these requirements and the Department's suggested September 4, 1990, deadline for submission of the drug prevention program certification. Commenters felt that the effective date should be delayed or extensions granted freely upon self-certification by the agency or institution that it had satisfied the statutory requirements for an extension of time. Among the reasons given by the commenters for the need for delay for IHEs were the need for issuance of the final regulations and certification forms, negotiation requirements under the National Labor Relations Act (NLRA), the expense of printing materials in addition to those that have already been prepared for fall semester orientation of students, the need to develop the written materials, such as the descriptions of health risks and legal sanctions, and the need to involve students and employees in amending the campus judicial code and employee handbooks. For LEAs, commenters cited the lack of administrators working over the summer in rural school districts, the need for time to create a high-quality program, and the need for time to develop policies and obtain school board approval.

Related to these concerns, commenters also asked for clarification about the degree to which an IHE, SEA, or LEA must have implemented its drug prevention program before the certification is signed and submitted. Commenters asked for interpretations of the certifications to the effect that an IHE by October 1, 1990, must have developed required materials but need not have actually distributed them, have in place a schedule for review of its disciplinary policies but need not have actually completed the process of amending its standards of conduct, begun negotiation with labor unions but need not have completed its negotiations, or simply have in effect an implementation plan.

Discussion: As was explained in question four of appendix D to the NPRM, the Secretary believes that Congress intended the required drug prevention programs and policies to be in effect for school year 1990-91 to the extent feasible. Moreover, this is a realistic expectation; Public Law 101-226, the provisions of which are generally clear and understandable, was enacted December 12, 1989, and proposed rules were published on April 24, 1990. In addition, certain elements of these programs—such as the distribution of required documents—are discrete tasks that, in most instances, can be accomplished before, or at the same time, the certification is submitted. For these reasons, any request for extension of time to submit a drug prevention program certification must include a written justification as required in Sec. 86.6(b)(2) of this part, in order to provide a basis for evaluation by the Secretary.

Because of the wide variety of institutions involved, and the unique circumstances that affect many of these institutions, it is not possible to identify with precision which steps an institution must have taken to implement its programs and policies prior to the date of the certification or October 1, 1990. However, general guidance is possible: The Secretary believes that institutions must have adopted the programs and policies required by the regulations and have taken significant steps to implement those programs and policies before their certification is submitted. Further, the Secretary believes that the certification must represent a good faith commitment on the part of the certifying institution to complete implementation of its programs and policies as quickly as feasible during school year 1990-91, consistent with the purposes of Public Law 101-226. If, in order to

implement its drug prevention program for employees, an IHE, SEA, or LEA is required by the NLRA or State law to negotiate changes to a labor agreement, the IHE, SEA, or LEA may submit the certification if it has developed the components of its drug prevention program affecting employees, including the standards of conduct and disciplinary sanctions, and if it has actually begun the negotiation process and has a plan for prompt completion of that process.

Changes: None.

Review of LEA Extension Requests

Comment: One commenter understood the regulations to require SEAs to review LEAs' requests for extension of time to submit a drug prevention program certification. The commenter also questioned what would happen to LEAs whose extension requests were still being processed as of October 1, 1990, and whether there would be any appeal rights if a request for extension of time is denied.

Discussion: Section 86.6 does not require SEAs to review LEA requests for extension of time to submit a drug prevention program certification. The SEA may, however, forward to the Secretary with an LEA's request for an extension a recommendation as to whether the Secretary should approve the LEA's request.

The Secretary announced in 55 FR 17402 (April 24, 1990) that extension requests received by the Secretary after August 1, 1990, would not be considered. The Secretary anticipates that all requests received by August 1, 1990, will be processed prior to October 1, 1990. The regulations do not provide for an appeal if a request for extension of time is denied.

Changes: None.

Subpart B-Institutions of Higher Education

Sec. 86.100 What must the IHE's drug prevention program include?

Selective Applicability/Implementation

Comment: A commenter expressed the view that the regulations should require that each IHE assess the level of the drug and alcohol problem on its campus, and that an IHE be required to implement a drug prevention program only where rates of illicit drug and alcohol use exceed a particular level. Other commenters also suggested that each IHE perform an institutional self-evaluation and then determine whether it is appropriate to provide students with the information required by this section or to take other measures.

Discussion: Though the regulations do not require institutional self-evaluation, the Secretary agrees that those evaluations can be a useful first step in addressing illicit drug use and alcohol abuse and encourages IHEs to undertake those evaluations. However, Public Law 101-226 requires that each IHE, in order to receive Federal financial assistance implement all aspects of the drug prevention program described in this section, and the Secretary has no authority to waive compliance with this requirement.

Changes: None.

Applicability of Certification Requirement to Proprietary Schools Under New Ownership

Comment: Several commenters asked for clarification on whether a new owner of a proprietary school will be required to submit a certification.

Discussion: The Secretary intends to treat this certification requirement similarly to other certification requirements applicable to IHEs. An IHE with a new owner would be required to submit a drug prevention program certification only if, under 34 CFR 600.31, there has been a change of ownership resulting in a change of control, and the Secretary determines that the IHE under new ownership does not meet the requirements to be considered the same IHE as under previous ownership.

Changes: None.

Applicability of Certification Requirement to State Agencies That Receive and Allocate Federal Funds to IHEs.

Comment: A commenter asked whether a State agency such as a State Board of Vocational, Technical, and Adult Education that receives and allocates Federal funds to IHEs, is required to submit the certification.

Discussion: Only IHEs, SEAs, or LEAs as defined in Sec. 86.7 are required to submit a drug prevention program certification. Unless the State agency itself meets one of those definitions, it is not required to submit a certification.

Changes: None.

Additional Material Recommended for Certification

Comment: A commenter thought that each IHE should be required, as part of its drug prevention program, to describe its drug prevention program design and plan for implementation, identify the individuals who will plan and implement the program, list their qualifications, specify, the percentage of time they will spend on implementing the drug prevention program and identify the administrative structure under which they will function. Another commenter recommended adding a requirement that each IHE identify and provide an employee assistance program and student assistance program.

Discussion: In implementing their drug prevention programs, IHEs may choose to adopt the commenters' suggestions; however, under these regulations they are not required to do so. The Secretary believes that beyond meeting the statutory requirements for its drug prevention program, each IHE should have the discretion to determine what, if any, additional aspects of a program it should implement. The statute and regulations impose minimum requirements for drug prevention programs, and the Secretary encourages IHEs to implement appropriate additional aspects of their drug prevention programs.

Changes: None.

Burden of Distributing Materials to All Students and Employees

Comments: Numerous IHEs protested that annual distribution in writing of the materials required by this

subparagraph to each student and employee will be expensive and burdensome, and that individual written notices are not the most effective means of communication. Some commenters pointed out that the phrase "in writing" does not appear in the Act and wanted to satisfy the requirements of the Act by holding assemblies or simply posting notices of the availability of the materials. Other commenters wanted clarification on whether including the materials in campus publications or handing out materials to those who care to take them would satisfy the distribution requirement. An IHE asked about its liability if it mailed the materials and they were returned as undeliverable because of a bad address. Commenters also asked if, after the initial distribution of materials, IHEs could distribute the materials only to new students and employees. A commenter also wanted to select one date in the academic year and distribute materials only on that date; this commenter did not want to have to distribute materials to new students enrolling for subsequent academic terms in that year.

A number of commenters asked that the regulations define "student". These commenters did not want to have to distribute the drug prevention program materials to everyone who came into "instructional contact" with an IHE; for example, continuing education students, participants in alumni enrichment activities, and children participating in activities in the IHE's facilities.

Finally, an IHE asked if it could send only the standards of conduct to each student along with a notification that the information on legal sanctions and health risks was available on request. Another IHE suggested that rather than sending out long technical documents, concise summaries should be provided.

Discussion: Public Law 101-226 specifies that each IHE must distribute the required materials to each student and employee. While the phrase "in writing" does not appear in the statute, the Secretary believes that in order to ensure that each student has access to and can refer to the required materials, they must be in writing. If an IHE wished also to hold assemblies or post notices about its drug prevention program, it is free to do so, but it must also distribute the required materials in writing to each student and employee. Including the materials in campus publications such as student or employee handbooks is acceptable, as long as the publications are distributed to each student and employee.

An IHE should determine the most effective method for ensuring that the required materials are distributed to each student and employee. However, the method chosen should be one that will reach every student and employee, such as the method for distributing grade reports or pay checks. Merely making the materials available to those who wish to take them does not satisfy the requirements of Public Law 101-226 or the regulations, because it does not ensure distribution to each student and employee of the IHE. If an IHE uses mailing as its means of distribution and the mailing to a particular student is returned, the IHE should use the method it normally would to locate and deliver a mailing to a particular student under those circumstances.

Public Law 101-226 requires annual distribution to all students and employees. Thus, an IHE must distribute the materials each year to each student and employee, not just to new students and employees. If new students enroll or new employees are hired after the initial distribution in the academic year, these students and employers must also receive the materials. However, the Secretary agrees that the term "student" should be clarified so that only students taking one or more classes for academic credit are considered "students" for purposes of these regulations.

Notification to students about the availability of materials is not sufficient; the actual materials must be distributed. However, the Secretary agrees that long technical documents may not be the most effective way of communicating with students and employees. A concise summary, with references to longer technical documents, may be appropriate. Guidance as to the level of detail expected for the various types of materials is discussed below.

Changes: Language clarifying that only students who are taking one or more classes for any type of academic credit except for continuing education units are covered by the certification has been added to Sec. 86.100.

Treatment of Alcohol in an IHE's Standards of Conduct

Comment: An IHE thought that alcohol, which is a legal substance, should be treated differently from illicit drugs in its standards of conduct so that IHEs can teach their students the responsible drinking of alcoholic beverages.

Discussion: Public Law 101-226 and regulations require that an IHE's standards of conduct, at a minimum, prohibit "the *unlawful* possession, use or distribution of illicit drugs or alcohol" (emphasis added). Thus, an IHE's standards of conduct must prohibit unlawful activities associated with alcohol, including prohibition against use by students who are under-age. The regulations do not, however, specify what standards of conduct an IHE must adopt toward lawful activities associated with alcohol; these standards are left to the discretion of the IHE.

Changes: None.

"Activities" To Be Covered by Standards of Conduct

Comment: An IHE suggested clarifying that the term "activities" applies to all on-campus and officially sponsored off-campus activities, including field trips, but not to student-sponsored social activities or to professional meetings attended by employees. A second IHE noted that the answer to question 6 in appendix D to the NPRM states that only off-campus activities that are part of IHE-sponsored activities are covered. This commenter asked how the standards of conduct required under these regulations affects Pell grant certifications under the Drug-Free Workplace Act, which apply to any activity during the period covered by the Pell grant.

Discussion: The standards of conduct must prohibit, at a minimum, the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on school premises or property, or as part of any of its activities. Thus, the term "activities" does apply to all on-campus and off-campus activities that are considered to be school activities, such as officially sanctioned field trips. The standards of conduct must also apply to student-sponsored social activities or professional meetings attended by employees, if these activities or meetings are considered IHE-sponsored activities.

Under the Drug-Free Workplace Act, a Pell grant recipient must certify that he or she will not engage in any activity involving illicit drugs during the period covered by the Pell grant; thus, the certification may apply to activities that

are not sponsored by the IHE, such as off-campus nonacademic pursuits. The scope of the Pell grant certification is therefore broader than the required scope of the standards of conduct. An IHE is not required under these regulations to establish standards of conduct for activities unrelated to its students' attendance at an IHE, though there is nothing in the regulations prohibiting it from doing so.

Changes: None.

Description of Legal Sanctions Should Be Provided

Comments: A number of commenters asked for assistance with preparation of a description of applicable legal sanctions. Most wanted the Department to provide a description of the sanctions under Federal law. Many also wanted the Department to provide descriptions of State and local laws, as well. Commenters asked for clarification as to how detailed the description should be.

Discussion: A description of the sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol is contained in appendix A to this document. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information.

Obtaining descriptions of State and local sanctions is the responsibility of the IHE. The Secretary suggests that IHEs may want to coordinate with other IHEs in their locality and State to avoid duplication of effort in obtaining this information. The description of Federal sanctions included in appendix A can provide guidance as to the minimum level of detail for the description of sanctions under State and local laws.

Changes: None.

Description of Health Risks Should Be Provided

Comments: A number of commenters asked for assistance with preparation of a description of the health risks associated with the use of illicit drugs and the abuse of alcohol. Most commenters wanted the Department to provide a description of health risks. Commenters asked for clarification as to how detailed the description should be.

Discussion: A description of the health risks associated with the use of illicit drugs and the abuse of alcohol is contained in appendix B to this document. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information.

Changes: None.

Clarification on Description of Health Risks

Comments: Several comments were submitted asking for clarification on various aspects of the description of health risks associated with the use of illicit drugs and the abuse of alcohol. An IHE wanted a definition of the abuse of alcohol. Another commenter asked if IHEs were required to list health risks of drugs commonly abused on their campuses or for entire classes of drugs. A third commenter inquired whether illicit drugs means only controlled substances or includes the abuse of drugs that are otherwise legal, noting that it would be difficult to describe risks attached to otherwise legal drugs.

Discussion: The definition of abuse of alcohol is within the discretion of the IHE. The description of health risks in appendix B provides guidance on the minimum level of detail required should an IHE wish to prepare its own description of health risks. IHEs are encouraged to provide at least a general discussion of the health risks associated with the abuse of otherwise legal drugs, but are not required to provide a detailed description of these risks.

Changes: None.

Clarification on Description of Available Counseling, Treatment, or Rehabilitation Programs

Comments: An IHE wanted the required description of any drug or alcohol counseling, treatment, or rehabilitation programs available to students and employees to be limited to on-campus programs, and merely provide directions on obtaining information about off-campus resources. Another IHE wanted to provide no description at all, and merely make this information available on an as needed-basis.

Discussion: An IHE must provide each student and employee with a description of any programs available on-campus. An IHE should provide a description of off-campus programs, but is required to do so only if no on-campus programs are available.

Changes: None.

Description of Disciplinary Sanctions

Comments: A commenter asked if an IHE could just list the sanctions that might be imposed for violations of the standards of conduct, or whether the statement must describe what sanctions will be applied for each type of offense. Another commenter recommended that the description consist of a summary in nontechnical language, rather than a specific description of the sanctions to be imposed.

Discussion: The Secretary believes that it is important that students and employees know what penalties may be imposed by an IHE for violation of the IHE's standards of conduct. The description should identify the sanctions or range of sanctions that will be imposed for a particular violation of the standards of conduct.

Changes: None.

Enforcement Role of IHEs

Comment: Several IHEs objected to the requirement that IHEs impose sanctions on students who violate rules prohibiting illicit drug and alcohol possession or distribution on the grounds that the regulation assigned a law enforcement or *in loco parentis* role to IHEs that they felt was inappropriate.

Discussion: The regulatory requirement that IHEs distribute a clear statement that they will impose disciplinary sanctions for violations of the IHE's standards of conduct, and consistently enforce those sanctions, are found in Public Law 101-226. The Secretary has no authority to change the requirement.

Changes: None.

Discretion of IHEs

Comment: Several IHEs felt that having to specify particular disciplinary sanctions for each offense restricts an IHE's discretion to consider the severity of each incident and the prior disciplinary history of the student or employee. Another commenter felt that threats of disciplinary and legal sanctions could interfere with the professional approach of IHE medical personnel in their counseling and medical practice.

Discussion: The regulations require a clear statement that the IHE will impose disciplinary sanctions for violations of its standards of conduct, and consistent enforcement of those sanctions, but they do not prevent an IHE from considering the circumstances surrounding an offense. Nor do the regulations require medical or counseling personnel employed by an IHE to refer a student or employee for disciplinary action or prosecution. The Secretary also notes that completion of a rehabilitation program may be one of the disciplinary sanctions imposed by an IHE.

Changes: None.

Referral for Prosecution

Comment: Several IHEs asked if all violations of their standards of conduct must be referred to law enforcement officials for prosecution. A commenter also asked if referral for prosecution conflicts with the Family Education Rights and Privacy Act (FERPA), sometimes referred to as the Buckley Amendment.

Discussion: Under these regulations, it is up to the discretion of the IHE to decide which violations of its standards of conduct to refer for prosecution.

FERPA requires educational agencies and institutions that receive Federal funds under applicable programs to engage in certain record-keeping practices intended to give students access to their records and to prohibit release of these records in certain circumstances without the permission of the student. See 20 U.S.C. 1232g.

Under an exception to FERPA, the records of a law enforcement unit established by an IHE to enforce campus security are not considered "education records" as defined by FERPA if the law enforcement unit does not have access to the education records of the IHE, and the IHE does not have access to the law enforcement unit's records. (20 U.S.C. 1232g(a)(4)(B)(ii). Under these conditions, the law enforcement unit may refer violations for prosecution.

IHEs should be aware that FERPA applies only to records, not to individual observations. Therefore, an IHE may adopt a policy requiring staff, faculty, and students to report violations to the police. However, any record of the IHE related to the reported violation could not be provided to the police or other law enforcement officials.

Changes: None.

"Consistent With Local, State and Federal Law"

Comment: Several commenters stated that the requirement that an IHE impose disciplinary sanctions on its students and employees "consistent with local, state and Federal law" was not clear. They sought clarification as to whether this phrase referred to criminal law relating to drug and alcohol abuse or to constitutional law protecting rights of defendants, which is problematic for private IHEs who do not regard themselves as state actors. Another commenter asked if this phrase also refers to laws relating to discrimination regarding handicaps, since alcoholism is treated as a handicap under some of these statutes.

Discussion: Public Law 101-226 requires IHEs to impose disciplinary sanctions, but only those disciplinary sanctions that are otherwise authorized by local, State or Federal laws. To the extent that an IHE is currently bound by antidiscrimination statutes, contract law, and constitutional protections, it will continue to be bound by those laws.

Changes: None.

Meaning of "Effectiveness"

Comment: Commenters sought clarification on what "effectiveness" means in the context of the biennial review to determine the effectiveness of an IHE's drug prevention program. Commenters also asked what documentation of evaluation of effectiveness would be acceptable. An IHE assumed that it would be up to each IHE to determine its own criteria for effectiveness. Another IHE thought a sophisticated sociological model was needed because multiple variables affecting drug and alcohol use would make it impossible to measure the effectiveness of an IHE's drug prevention program in isolation.

Discussion: Recognizing the variety of drug prevention programs that IHEs will develop to comply with these regulations, the Secretary does not specify particular criteria or measures to gauge program effectiveness beyond requiring that evaluations of program effectiveness do not rely solely on anecdotal observations. To the extent possible, the Secretary encourages, but does not require, IHEs to use objective measures that would allow an institution to track the use levels of alcohol and other drugs by students and employees.

Because collection of data that bears directly on the issue of incidence and prevalence of drug use can be costly and difficult to collect, IHEs may want to consider the use of other measures that could include, but are not limited to:

- tracking the number of drug- and alcohol-related disciplinary sanctions imposed;

- tracking the number of drug- and alcohol-related referrals for counseling or treatment;

- tracking the number of drug- and alcohol-related incidents recorded in the logs of campus police or other law enforcement officials;

- tracking the number of drug- and alcohol-related incidents of vandalism;

- tracking the number of students or employees attending self-help or other counseling or other counseling groups related to alcohol or drug abuse; and

- tracking student, faculty and employee attitudes and perceptions about the drug and alcohol problem on campus.

Changes: None.

Consistent Enforcement of Disciplinary Sanctions

Comments: A commenter felt that requiring consistent enforcement of disciplinary sanctions would prevent a student judicial system from deciding appropriate sanctions on the facts of each case. Another commenter felt that in requiring consistent enforcement, the regulations should take into account the different positions at an IHE of students, faculty, and staff, and the limited authority of the IHE over students and faculty.

Discussion: The Secretary does not believe that consistent enforcement precludes an IHE from considering the circumstances surrounding each case or imposing different sanctions on students, faculty and staff. An IHE must, however, treat similarly situated offenders in a similar manner.

Changes: None.

Sec. 86.101 What review of IHE drug prevention programs does the Secretary conduct?

Representative Sample

Comment: A commenter asked how the Secretary will choose representative samples of IHE drug prevention programs for review and recommended that the sample be chosen geographically. Another commenter felt that the reviews should not be conducted as part of reviews of an IHE's administration of the Federal student financial aid programs under title IV of the Higher Education Act, but instead by the Drug-Free Schools and Campuses Task Force.

Discussion: The Department is studying various means of choosing the representative sample of IHE drug prevention programs for review. Choosing a sample geographically or conducting reviews as part of title IV reviews are only several of the types of samples under discussion.

Changes: None.

Distribution of Drug Prevention Program Materials

Comment: An IHE recommended that the Department facilitate the exchange and distribution of campus-developed materials collected as part of the review process to provide assistance to all IHEs.

Discussion: The Secretary agrees that exchange of materials developed for IHE drug prevention programs is a good practice. The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse, established as a joint effort of the Department of Education and the higher education community for the purpose of developing an institutional response to the alcohol and other drug problems on campuses, has agreed to act as a facilitator for distribution of these materials.

Changes: None.

Sec. 86.102 What is required of an IHE that the Secretary selects for annual review?

The Department's Access to Information and Records

Comment: Several commenters were concerned that release of personnel, medical or counseling records to Department reviewers might violate Federal, State, or local laws concerning access to records. Commenters also noted that under campus disciplinary codes and faculty hearing mechanisms, many student and faculty records are considered confidential; these commenters felt that the Department should be prepared to issue subpoenas for these records in order to protect IHEs from third party liability.

Discussion: Authorized representatives of the Secretary may have access to education records of students as necessary to enforce the Federal legal requirements related to the receipt of funds under Federally-supported education programs without violating the privacy rights of students under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g (b)(1)(C) and (b)(3). However, unless collection of the information is specifically authorized by Federal law, the provision of FERPA that authorizes this disclosure requires that the personally identifiable information collected from those records must be protected so as not to disclose the identity of the students to anyone other than the officials involved in the monitoring, auditing, or enforcement action. Further, whenever the records are no longer required for the purposes for which they were collected, the records must be destroyed. Any monitoring or auditing by Federal or other education officials will be done in conformance with these requirements, which are more than adequate to protect the privacy of students.

Regarding access to records of IHE personnel, FERPA provides that authorized representatives of the Secretary and the Comptroller General of the United States shall have access to any records, including personnel records of a recipient of Federal financial assistance that may be related to the compliance of the recipient with a requirement of any applicable program. Therefore, the Secretary may have access to any records, including personnel records, which relate to compliance with Public Law 101-226.

Changes: None.

Sec. 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

What Records Must Be Kept

Comments: Several IHEs sought clarification as to what records must be maintained to confirm annual distribution of materials to students and employee. In particular, an IHE wanted to know if it is necessary to maintain signed documentation of receipt of materials for each student.

Discussion: An IHE is not required to obtain from each student and employee a signed statement that the IHE has provided the student or employee with the materials required by these regulations. At a minimum, an IHE must maintain a copy of materials distributed, and any additional materials made available to students and employees, records indicating that these materials were distributed to each of the IHE's students and employees, and the results of the IHE's annual evaluation of its drug prevention program.

Changes: None.

Subpart C-State and Local Educational Agencies

Sec. 86.200 What must the SEA's and LEA's drug prevention program for students include?

Applicability of This Subpart to Certain IHEs

Comment: A State Board of Vocational, Technical and Adult Education that operates vocational, technical and adult education districts that have been certified as institutions of higher education under 34 CFR part 600 asked if these districts are required to meet their certification requirements for SEAs and LEAs as well.

Discussion: Only those entities that meet the definitions of "SEA" and "LEA" in Sec. 86.7 are required to submit the certification required under this subpart.

Changes: None.

Additional Material Recommended for Certification

Comment: A commenter recommended adding the requirement that each SEA and LEA, as a part of its drug prevention program, identify and provide an employee and student assistance program.

Discussion: SEAs and LEAs may choose to implement the commenters' suggestions; however, under these regulations they are not required to do so. The Secretary believes that beyond meeting the statutory requirements for its drug prevention program, each SEA and LEA should have the discretion to determine what, if any, additional aspects of a program it should implement. The statute and regulations impose only minimum requirements for drug prevention programs, and the Secretary encourages SEAs and LEAs to implement additional aspects of drug prevention programs as appropriate.

Changes: None.

Early Childhood Level Programs

Comment: One commenter asked whether an LEA is required to design an early childhood level drug and alcohol education and prevention program if the LEA does not operate an early childhood level program and, further, whether an LEA is required to design a drug prevention program for pupils in Head Start.

Discussion: An LEA is not required to design an early childhood level drug and alcohol education and prevention program if the LEA does not operate an early childhood level program. If the LEA itself operates a Head Start program or other early childhood education program, however, the LEA would need to have an early childhood level component in its drug prevention program.

Changes: None.

Frequency/Means of Distribution of Materials to Parents and Students

Comment: Commenters wanted clarification on the frequency with which parents, students and employees must be given copies of required materials and notified that compliance with the standards of conduct is mandatory. In addition, commenters questioned what would constitute adequate notification. One commenter thought that existing channels such as parent handbooks and school newsletters should be used for notification; that separate notification should not be required; and that verbal notification should be allowed as an alternative to written notification for elementary and ungraded students.

Discussion: The Secretary believes that it would be most effective for SEAs and LEAs to distribute annually the materials required by Secs. 86.200 and 86.201. In addition, compliance with the distribution requirements could be easily documented with an annual distribution. However, if an SEA or LEA intends to maintain detailed documentation to show how the SEA or LEA has satisfied the distribution requirements, a less frequent distribution of materials may be possible.

The regulations do not require a separate dissemination of information. Existing channels, such as parent handbooks, that are designed to reach every parent and student are acceptable means of dissemination. The Secretary believes that verbal notification is an appropriate means of notifying very young students or students who are unable to read. However, all other students and all parents should receive written materials.

Changes: None.

Sec. 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

Periodic Reviews by SEAs

Comment: One commenter, in response to the requirement in Sec. 88.202 (a)(1) that SEAs annually review a representative sample of LEA programs, suggested that SEAs be given discretion to decide whether the statutory requirement for periodic review means annual review.

Discussion: The review process is designed to provide information on whether LEAs have properly implemented drug prevention programs. In order to make the review process effective, the Secretary has determined that the reviews must be conducted annually.

Changes: None.

Subpart D-Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

Sec. 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

Basis for Sanctions

Comment: An IHE commented that failure to consistently enforce disciplinary sanctions for violations of an IHE's standards of conduct should be eliminated as a basis for sanctions; disciplinary sanctions should be based on the facts of each individual case and not reviewed by the Department.

Discussion: Consistent enforcement of disciplinary sanctions is a statutory requirement and thus failure to

consistently enforce those sanctions cannot be eliminated as a possible violation. However, nothing in these regulations precludes an IHE, SEA or LEA from basing disciplinary sanctions on the circumstances of each individual case. See the discussion under Sec. 86.100, "Consistent enforcement of disciplinary sanctions," in this Appendix.

Changes: None.

Suggested Limits on the Imposition of Particular Sanctions by the Secretary

Comments: A commenter believed these regulations should specify that repayment of Federal funds or termination will not be imposed during an initial period of noncompliance, unless the Department has previously attempted alternative means to resolve an IHE's noncompliance, an IHE is a repeat offender, or the Department determines that an IHE was acting in bad faith or attempting to deceive the Department. Several other commenters advocated that an IHE that submits a certification "in good faith" should be able to rely on the Department's acceptance of its certification and not be obligated to repay funds if the Department later determines that a drug prevention program is "technically deficient."

Discussion: Repayment of Federal funds or termination are only part of a range of responses and sanctions that the Secretary may impose if an IHE, SEA, or LEA violates this part. The type of response or sanction the Secretary will impose will depend on the severity of the violation. It is likely that the Secretary would give an IHE, SEA, or LEA an opportunity to correct less serious violations through the provision of technical assistance or by entering into a compliance agreement. However, the Secretary has no authority to waive compliance with the certification requirements.

Changes: None.

Sec. 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

Coordination With Other Federal Agencies

Comment: Several commenters asked how the Department would inform other agencies when it imposed sanctions on an IHE, SEA, or LEA. One commenter felt that other agencies should have input into the Department's choice of sanctions, particularly if the sanctions of repayment of Federal funds or termination would affect participation in programs that benefit children, such as the School Lunch Program. Another commenter wanted to know, if the sanction of repayment of Federal funds is imposed, which Federal agency would receive the funds, and how the distribution of repaid funds would be coordinated.

Discussion: The Department will submit the names of those entities that have been terminated from receiving some or all forms of Federal financial assistance for violations of this part to the General Services Administration for inclusion in its "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

The Secretary agrees that other Federal agencies should be consulted as to the Department's choice of sanctions; the Department is in the process of determining how those consultation procedures would operate. The Department is also in the process of determining how the repayment procedures would operate, and will work through intra-governmental channels to coordinate repayment with other Federal agencies.

Changes: None.

Repayment of Funds

Comment: A commenter suggested that repayment of any or all forms of Federal financial assistance received by an IHE, SEA, or LEA when it was in violation of this part should not be included as a sanction because it is not specifically authorized by Public Law 101-226.

Discussion: Section 86.301 includes among the specified sanctions the "repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part." Public Law 101-226 provides that an IHE or LEA shall not be "eligible" to receive financial assistance under any Federal program unless it makes the required certification. The traditional remedy available to the government if any entity that is ineligible receives Federal funds is a demand for repayment of those funds. Indeed, a Federal agency is generally obligated to seek the repayment of funds committed to its administration in situations where an ineligible entity has received them. 51 Dec. Comp. Gen. 162 (1971).

The absence in Public Law 101-226 of language repeating this principle does not signify that Congress intended that it should not apply if an entity fails to file the requisite certification but nevertheless receives Federal funds. On the contrary, Public Law 101-226 authorizes the Secretary to impose a range of responses and sanctions "including [provision of] information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance." While this list does not specifically authorize repayment of Federal financial assistance received by an IHE, SEA, or LEA when it was in violation of this part, the use of the word "including" indicates Congressional intent that the Secretary have the discretion to issue or impose additional responses and sanctions. Under these circumstances, the inclusion in the regulations of provisions for repayment of funds is both authorized and consistent with Public Law 101-226 and general principles of law.

Changes: None.

Debarment and Suspension

Comment: A commenter questioned why the proposed regulations do not include debarment or suspension as sanctions to be imposed by the Secretary under this subpart.

Discussion: The Secretary does not believe it is necessary to prescribe suspension and debarment as additional sanctions. The regulations already provide for termination, which has much the same effect as debarment, and was specifically included as a possible sanction in Public Law 101-226.

Changes: None.

Effect of Sanctions on Consortia

Comment: A commenter asked whether sanctions imposed on an IHE would affect an IHE's participation in a Federally funded consortium.

Discussion: An IHE may be sanctioned by termination of any or all forms of Federal financial assistance, which could include Federal funds received through participation in a consortium. In those circumstances, an IHE may continue to participate in a Federally funded consortium only if the IHE does not receive Federal financial assistance through the consortium.

Changes: None.

Sec. 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

Comment: A commenter interpreted the regulations as authorizing the Secretary to impose a sanction while an appeal to an Administrative Law Judge (ALJ) is pending and suggested that the regulations provide a "show cause" procedure so that an IHE, SEA, or LEA can respond to the Department before a sanction is imposed.

Discussion: The regulations specifically provide, in Secs. 88.304(a)(3) and 88.407(c), that repayment of Federal financial assistance will not be required or that termination will not be effective on the date specified by the Secretary if the IHE, SEA, or LEA submits a timely request for a hearing. Thus, sanctions will not be imposed while an appeal is pending. A "show cause" procedure is therefore unnecessary.

Changes: None.

Subpart E-Appeal Procedures

Applicability of GEPA/Secretarial Review of ALJ Decisions

Comment: Several commenters criticized the proposed regulation because, in their view, the regulations improperly limited the power of ALJs in appeal proceedings, by not authorizing them to, among other things, order discovery or issue subpoenas and by making the decision of an ALJ reviewable by the Secretary. In this regard, the commenters said that the proposed regulations were arguably inconsistent with part E of the General Education Provisions Act (GEPA) relating to the enforcement of grant terms and conditions and that the provisions of the proposed regulations authorizing the Secretary to review ALJ decisions were arguably inconsistent with the "plain meaning" of Public Law 101-226.

Discussion: The appeal procedures in subpart E of the regulations are designed to produce a swift but fair resolution of disputes arising out of Departmental decisions to demand the repayment of Federal financial assistance or to terminate the eligibility of an IHE, SEA, or LEA. In no sense are these procedures intended to limit arbitrarily the powers of the ALJs; in fact, the procedures are modeled on the fine, limitation, suspension, and termination proceedings for IHEs in subpart G of 34 CFR part 668, which are themselves conducted by ALJs, because of the greater similarity of such proceedings to those appeals expected to arise under the Drug-Free Schools and Campuses certification program. The provisions of part E of GEPA do not govern appeals unless the Secretary, acting under section 451(a) of GEPA, designates such proceedings accordingly, and there is nothing in the text or legislative history of Public Law 101-226 that indicates a Congressional intent, or even expectation, that this would be done. To the contrary, section 22 of Public Law 101-226 that indicates a Congressional intent, or even expectation, that this would be done. To the contrary, section 22 of Public Law 101-228 broadly commands the Secretary "to publish regulations to implement and enforce" the certification requirements it contains. In addition, the fact that certain of the appeal provisions specified in section 22 (timing of hearings; availability of Secretarial review of ALJ decisions) differ on their face from their counterparts in part E suggests that wholesale incorporation of the latter provisions was not intended.

The regulations in subpart E of part 86 authorize, but do not require, the Secretary to review ALJ decisions. The preamble to the NPRM (55 FR 17386 (April 24, 1990)) explained that an interpretation of the statute that prohibited Secretarial review would ignore two fundamental rules of statutory construction, namely that statutes should, as far as possible, be read to harmonize with related statutes and to avoid constitutional difficulties. In fact, such an interpretation would produce a result that is not only unprecedented within the Department's experience and inconsistent with the organic statutes that govern the operations of the Department, but would also be subject to serious constitutional question under the Appointments Clause. Particularly in the absence of any clear evidence that Congress intended such an unlikely result, the Secretary believes that the purposeful interpretation offered in the NPRM is the better reading of the law.

Changes: A clarifying change has been made to Sec. 86.410(b)(1) to conform more closely to the language of the statute.

Sec. 86.400 What is the scope of this subpart?

Failure to Submit Certification

Comment: An IHE expressed the view that the hearing procedures in this subpart should apply to failure to submit certification.

Discussion: The hearing procedures do apply if the Secretary proposes to impose a sanction on an IHE, SEA, or LEA that received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification. However, the hearing procedures do not apply to the Secretary's determination that an IHE, SEA, or LEA is ineligible to receive Federal financial assistance because of failure to submit a certification. Because the statute gives no discretion in this matter, there would be no reason for a hearing if an IHE, SEA, or LEA becomes ineligible for failure to submit a certification.

Changes: None.

Sec. 86.402 Who may be a party in a hearing under this subpart?

Comment: A commenter suggested that Federal agencies should be parties to hearings under this subpart if the other parties agree; the commenter believed that

participation by Federal agencies could assist in settlement negotiations.

Discussion: The only issues to be decided by an ALJ in a hearing under this subpart are: (1) Whether an IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or (2) whether the IHE, SEA, or LEA violated its certification. These are issues with which other Federal agencies would not be familiar, and thus there would be no purpose served by their participation.

Changes: None.

Sec. 86.405 What are the requirements for filing written submissions?

Comment: An IHE suggested that the means of communication in proceedings under this subpart should include telefacsimile and express mail.

Discussion: The Secretary considers both express mail and courier services to be forms of hand delivery, and are thus permitted means of communication under this subpart. Because of the problems with ensuring that a telefacsimile is actually received, submission by telefacsimile cannot be permitted at this time.

Changes: None.

Sec. 86.410 What are the procedures for issuance of a decision?

Judicial Review

Comment: A commenter felt that the regulations should state that the final decision of the Secretary is subject to judicial review, presumably under the Administrative Procedure Act.

Discussion: Public Law 101-226 is silent on the issue of judicial review and therefore it is governed by the Administrative Procedure Act. Because the Secretary cannot regulate on the issue of judicial review, the Secretary does not believe it is necessary or appropriate to address the issue in these regulations.

Changes: None.

Sec. 86.411 What are the procedures for requesting reinstatement of eligibility?

Comments: A number of commenters objected to the requirement that an IHE, SEA, or LEA wait 18 months after the effective date of a termination to apply for reinstatement as an eligible entity. Several commenters suggested that an IHE, SEA, or LEA be permitted to reapply on demonstration of compliance with this part, rather than after a specified period of time, and that there was no legal basis for an 18-month period before reinstatement of eligibility. Commenters felt that the 18-month period was "punitive" and could interfere with Federally-funded research and hurt low income students who need financial aid.

Discussion: The Secretary believes that Public Law 101-226, in authorizing termination as a possible sanction, gives the Secretary the discretion to determine an appropriate length of time before an IHE, SEA, or LEA may be reinstated. The Secretary also believes that an 18-month period before reinstatement is appropriate. For termination to have any effect, it must last for a substantial period of time. The 18-month period is the same as termination for other violations by an IHE, and the Secretary considers violations of this part as serious as violations of the Federal student financial assistance regulations. The Secretary agrees, however, that demonstration of compliance is a necessary criterion for determining if a terminated institution should be reinstated as eligible.

Changes: A requirement has been added to Sec. 86.411(a) that an IHE, SEA, or LEA that has been terminated for violations of this part demonstrate compliance with this part before it can be reinstated.

[FR Doc. 90-19259 Filed 8-15-90; 8:45 am]

PART 99-FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A-General

Subpart B-What are the Rights of Inspection and Review of Education Records?

Subpart C-What are the Procedures for Amending Education Records?

Subpart D-May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

Subpart E-What are the Enforcement Procedures?

Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.

Appendix--Analysis of Comments and Changes

Subpart A-General

Sec. 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

Name of Program	Authorizing Statute	Implementing Regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) (20 U.S.C. 700, et. seq.)	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Programs.	The Rehabilitation Act of 1973, as amended (29 U.S.C. 700, et. seq.)	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, et seq.)	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Education Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1)	Parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Sec. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Sec. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to—

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are—

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include—

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are—

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that—

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Sec. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

Sec. 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

Note: heading amended January 7, 1993, effective February 25, 1993.

Sec. 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include—

(1) How the agency or institution informs parents and students of their rights, in accord with Sec. 99.7;

(2) How a parent or eligible student may inspect and review education records under Sec. 99.10, including at least—

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in Sec. 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under Sec. 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by Sec. 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under Sec. 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under Sec. 99.20, to obtain a hearing under Sec. 99.21(a), and to add a statement to the record under Sec. 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))

(Approved by the Office of Management and Budget under control number 1880-0508)

Note: (a)(5) amended January 7, 1993, effective February 25, 1993.

Sec. 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance,

and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to—

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under Sec. 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under Sec. 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under Sec. 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))

(Approved by the Office of Management and Budget under control number 1880-0508)

Subpart B-What are the Rights of Inspection and Review of Education Records?

Sec. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Sec. 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

Sec. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Sec. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's—

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if—

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Subpart C-What are the Procedures for Amending Education Records?

Sec. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) if the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

Sec. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Sec. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D-May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Sec. 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

Note: heading and (a) amended January 7, 1993, effective February 25, 1993.

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the

parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in Sec. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1), (b)(2)(B) and (b)(6))

Note: (b) and authority citation amended and (a)(13) added January 7, 1993, effective February 25, 1993.

Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include—

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Sec. 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under Sec. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

Sec. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—

(1) The disclosures meet the requirements of Sec. 99.31; and

(2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under Sec. 99.31(a)(11) or to disclosures to a parent or student under Sec. 99.31(a)(12).

(d) Except for disclosures under Sec. 99.31(a) (11) and (12), an educational agency or institution shall inform a

party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Sec. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

Sec. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E-What are the Enforcement Procedures?

Sec. 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

Note: heading and paragraphs (a) and (c) amended January 7, 1993, effective February 25, 1993.

Sec. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

Sec. 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

Note: Section 99.63 amended January 7, 1993, effective February 25, 1993.

Sec. 99.64 What is the complaint procedure?

(a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232g(f))

Note: paragraphs (c) and (d) added January 7, 1993, effective February 25, 1993.

Sec. 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under §99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of §99.64.

(Authority: 20 U.S.C. 1232g(g))

Note: Section 99.65 amended January 7, 1993, effective February 25, 1993.

Sec. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under §99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act—

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

Note: (a) and authority citation amended January 7, 1993, effective February 25, 1993.

Appendix-Analysis of Comments and Changes

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Two issues were raised that cannot be addressed under any specific section of the regulations. In one case commenters raised the issue in the context of different sections of the regulations; in the other case the issues concerned a section that was removed from the regulations. The following is a discussion of those two issues:

o Release of records from another agency or institution.

Comment: Several commenters believed an agency or institution should not be required to provide a student a copy of a transcript or other records from another agency or institution unless the originating agency or institution is no longer in existence. Other commenters believed language should be included that would permit an educational agency or institution to decline a request for disclosure of a student's transcript or other records from another agency or institution, unless the originating agency or institution is no longer in existence.

Discussion: The records in question fall within the definition of education records in that they are directly related to a student and are maintained by an educational agency or institution. An agency or institution is required to provide a parent or an eligible student access to all records, including those transcripts and records it did not originate but that it maintains. This requirement is set forth in the section entitled, "What rights exist for a parent or eligible student to inspect and review education records?" The FERPA does not forbid or require an agency or institution to disclose records to a third party, nor would it prevent an agency or institution from establishing a policy of not disclosing to third parties records that had originated at another agency or institution.

Change: None.

o Waiver of Rights.

Comment: One commenter expressed concern about the removal of the section which set forth the conditions under which a parent or a student could waive any or all of his or her rights under the Act. While not endorsing nonstatutory waivers, the commenter believed that if nonstatutory waivers will continue to be recognized, the conditions governing those waivers are necessary in order to protect against any possible abuse. A second commenter supported the deletion of the general waiver provision, stating that there is no authority for waivers beyond the very narrow ones set forth in the statute.

Discussion: There was no statutory requirement for the waiver provision that was included in the regulations or the conditions under which nonstatutory waivers could be permitted. Therefore, the section was removed. However, in removing it, the Secretary does not intend to preclude educational agencies and institutions from establishing policies and conditions under which parents or students would be allowed to execute nonstatutory waivers.

Change: None.

The Secretary's discussion of the other comments received on the NPRM follows:

Section 99.1 To which educational agencies or institutions do these regulations apply?

Comment: One commenter questioned the specific legislative authority exempting programs from this part and the effect of exempting the programs.

Discussion: The statute appears in Part C of the General Education Provisions Act (GEPA). Prior to the establishment of the Department, Part C applied only to programs administered by the Commissioner of Education. The Commissioner had no authority over programs administered by the Assistant Secretary of Education and the Director of the National Institute of Education. For programs that were transferred to the Department under the Department of Education Organization Act (DEOA), the provisions of Part C continued to apply only to those programs administered by the Commissioner on the day preceding the effective date of the DEOA. Thus, FERPA does not apply to former National Institute of Education programs and the former National Center for Educational Statistics, Rehabilitation Services, National Institute of Disability and Rehabilitation Research, College Housing, and the Transition Program for Refugee Children.

Change: None.

Section 99.3 What definitions apply to these regulations?

Definition of "Directory Information".

Comment: Several commenters objected to the standard proposed in the definition of "directory information," stating there is no authority to broaden the term to include other information beyond that identified by Congress. Others stated that what may be considered an invasion of privacy by one person may not be so considered by another, which could result in inconsistency.

In contrast, an equal number of commenters stated that the standard is "most helpful," a "notable improvement" and "should be incorporated in the regulations." One commenter asked that distinguished academic performance or public service be included.

One commenter asked how the standard was developed. Others seemed to believe the standard would replace the items that have been designated by statute.

Discussion: The statute states that "directory information" relating to a student includes the following: * * * and then lists items which may be considered directory information. The Department had interpreted the word "includes" to mean the list was not prescriptive. To clarify that

interpretation, the phrase "* * * and other similar information" was added to the definition in the regulations published in 1976.

The Secretary, in revising the regulations, decided it would be preferable to establish a standard for interpreting the scope of the legislation. The standard, together with the list of items, should provide sufficient guidance for educational agencies and institutions. The standard would permit an agency or institution to mention distinguished academic performance or public service as long as it had designated that information as directory information and the parent or student had not objected to such a disclosure.

Change: None.

Section 99.3 Definition of "Education Records".

Comment: A commenter believed the regulations are unclear on whether the definition of education records includes or excludes records relating to an individual in attendance at an educational agency or institution who is also employed as a result of his or her status as a "student."

Discussion: All records relating to a student who is also an employee of an educational agency or institution are included in the definition of education records if the student's employment is contingent on the fact that he or she is a student. For example, all records, including employment records, of a student enrolled in a work-study program are education records; likewise, all records of a student who, because he or she is a student, is employed by the educational agency or institution to serve as a teaching assistant, lecturer, or in some other capacity, are education records. Excluded from the definition of education records are the employment records of an employee—including, for example, a teaching assistant or lecturer—whose employment did not result from and does not depend on the fact that he or she may also be a student at the agency or institution, provided that these employment records are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose.

Change: The definition has been rewritten for clarity.

Comment: One commenter believed that personally identifiable information relating to events or matters that transpire after the student is no longer in attendance should be covered by the definition of education records. The commenter was concerned that the exclusion of this information from the definition is without statutory authority, that it would allow an educational agency or institution to collect negative allegations or information on a former student, and that the parent or student would have no protection against release of the information to third parties.

Discussion: The exclusion is intended to allow educational agencies and institutions and their alumni organizations to perform their traditional functions of fund-raising and publishing information concerning the accomplishments of alumni. Most, if not all, alumni organizations perform these functions in contact with the former students. Since the collection and use of negative information about alumni is not an accepted or usual practice of educational agencies or institutions, the Secretary has decided that any expectation of abuse is minimal and would be insufficient to justify imposing an additional regulatory burden.

Change: None.

Section 99.3 Definition of "Parent".

Comment: One commenter believed the definition of "parent" should specifically state that a school district must provide rights to both natural parents, custodial and noncustodial. Another commenter believed that the new section "What are the rights of parents?" should specifically state that "noncustodial" parents are included in the Act's coverage. The commenters believed the proposed additions would further clarify the rights of noncustodial parents.

Discussion: In revising the regulations, the Secretary recognized the need to clarify the rights of custodial and noncustodial parents. Therefore, the new section was added to state specifically that the agency or institution shall give full rights under the law to either parent unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody, that specifically revokes these rights. The Secretary believes this new section provides sufficient clarification and that the definition of "parent" should remain as it appeared in the proposed regulations.

Change: None.

Section 99.3 Definition of "Student".

Comment: One commenter stated that the inclusion of "former student" in the definition of "student" improves the definition. Two other commenters appeared to believe that the purpose of the revision was to extend the law's coverage to include former students.

Discussion: Former students are covered under the statute's definition of student and have been entitled to the same rights as students in attendance since the law's passage. The intent of the revision is to make this clear in the definition section of the regulations. Those specific provisions of the regulations where rights are limited to current students are clearly stated in the revised regulations. See Sec. 99.7 regarding annual notification, Sec. 99.34 regarding disclosure to other educational agencies and institutions and Sec. 99.37 regarding directory information.

Change: None.

Section 99.5 What are the rights of eligible students?

Comment: Two commenters believed the paragraph that was removed from this section, which is entitled "Student Rights" in the current regulations, should be reinserted. The paragraph stated that the rights of an eligible student are not affected by a provision in the regulations that allows an agency or institution to disclose information to the parents of such a student without the student's written consent. One of these commenters believed the reference should be reinserted in order to make clear the fact that the student's right to have access to his or her education records is not affected by the student's status as a dependent. The other commenter believed the removal of the reference may result in increased pressure on institutions to grant a parent's request for access without formally establishing that the

student is in fact a dependent as defined in section 152 of the Internal Revenue Code.

Discussion: This section of the regulations clearly states that when a student becomes an eligible student, all of the FERPA rights transfer from the parents to the student. The section of the regulations entitled "Under what conditions is prior consent not required to disclose information?" provides that an agency or institution may disclose information to the parents of a dependent student without the student's consent; the provision does not require the school to do so. The paragraph that is being removed was not intended to have any effect on an agency's or institution's decision on whether to grant the parent's request for information. Nor was it intended to affect an agency's or institution's policies in establishing that a student is a dependent as defined in section 152 of the Internal Revenue Code.

Change: None.

Comment: Three commenters believed educational agencies and institutions should be required to allow the parents of dependent students to inspect and review the education records of the student. Another commenter believed that even allowing educational agencies and institutions to afford the parents the opportunity to have access undermined the intent of the law by removing the student's right to have control over the disclosure. This commenter believed that specific procedures for release of information to parents in specific circumstances were needed.

Discussion: The statute clearly provides that the parents' rights afforded by the law transfer to the student when the student reaches age 18 or is attending an institution of postsecondary education. The statute also clearly provides that an educational agency may disclose the education records of a dependent student to the parents of the student without the student's consent. The Secretary has no authority to change these statutory provisions. He finds nothing in the statute to indicate that Congress intended the Department to develop procedures such as the one commenter suggested and believes that to do so would impose an unnecessary regulatory burden.

Change: None.

Comment: A commenter believed the regulations should clarify the status of handicapped students over the age of 18 whose handicapping condition is such as to affect their ability to understand and/or exercise their rights under the Act.

Discussion: The Secretary has carefully considered this question in light of the fact that at age 18 the rights transfer from the parent to the student. He has decided that a student who is so severely handicapped as to prevent the student from exercising his or her rights under the Act would in most cases be under the legal care or guardianship of another person or entity. In the absence of a court's order of guardianship, the Secretary believes it would be reasonable to presume that the parents of such a student are the persons who are in the best position to act on behalf of the student. Therefore, the Secretary has decided that no specific provision in the regulations is necessary.

Change: None.

Comment: One commenter was concerned about the statement in the proposed regulations that provides that an individual does not have rights in components of an "agency or institution at which the individual has never been in attendance." The commenter questioned whether a student who is enrolled in one component of a university and takes one course in another component is considered to be a student in attendance at, and with rights in, both components. The commenter believed the provision could result in the disclosure of records by a component of the institution in which the student has never been in attendance.

Discussion: In revising the regulations, two significant phrases were unintentionally omitted from the statement. The statement should have read, "If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission but has never been in attendance." Concerning the commenter's specific question, if an individual applied for but was not admitted to a component, the individual would have no rights with regard to his or her application for admission to that component. This result is consistent with extensive legislative history on the subject. However, if an individual took a course in the component to which he or she had been denied admission, that individual would have FERPA rights with respect to that course, but still would not have rights with respect to the denied application for admission to that component.

Change: The phrases "is or has been in attendance at" and "to which the individual has applied for admission" have been added.

Comment: A commenter was concerned that an institution might misinterpret the language in this provision to mean that a student would not have rights with respect to records which happen to be maintained in a component other than the component in which the student is enrolled.

Discussion: A student cannot be denied access or other rights with respect to his or her education records, regardless of location.

Change: None.

Comment: A commenter suggested that the words "his or her parent" in this section be changed to "the parents" and the words "parents of students" be changed to "parents."

Discussion: In revising the regulations, the Secretary changed the definition of "parent" to eliminate the need to refer to "the parent of the student" or "his or her parent" throughout the regulations. The need for changing the terminology in this section was overlooked.

Change: The terminology has been revised to read "parents."

Section 99.6 What information must an educational agency's or institution's policy contain?

Comment: One commenter believed an educational agency or institution should be required to include in its policy a statement that grades may not be appealed.

Discussion: The legislative history of FERPA indicates that the Act was not intended to be used to replace previously established procedures to appeal the grade given the student's performance in a course. However, given the discretion delegated to educational agencies or institutions in implementing FERPA, an agency or institution might choose to permit parents of students or eligible students to use FERPA procedures to challenge a grade. Therefore, the Secretary has decided that it is not necessary or appropriate to require educational agencies and institutions to state in their policies that a student's grade may not be appealed.

Change: None.

Comment: Another commenter expressed agreement with the revisions made in this section with regard to the written policy each educational agency or institution must adopt. However, the commenter seemed to believe that the regulations required an educational agency or institution to publish its policy as part of its annual notification and that this requirement was being removed in revising the regulations.

Discussion: The only revisions made in this section, which was previously numbered 99.5, were made for the purpose of clarification. Neither the current nor the revised regulations require that an educational agency or institution include its policy in the annual notification. Both regulations require that the annual notification include a statement of where the policy may be obtained.

Change: None.

Section 99.7 What must an educational agency or institution include in its annual notification?

Comment: One commenter believed the intent of the law is that educational agencies and institutions be required to "make notification available" to parents or students rather than to "notify" parents or students. Therefore, the commenter suggested that the word "notify" in the first paragraph of the section be replaced by the words "make notification available."

Discussion: The statute requires educational agencies and institutions to inform the parents or the eligible students of the rights accorded them by the Act. In order to inform the parents or the eligible students of their rights, educational agencies and institutions would be required to notify, not simply make notification available.

Change: None.

Comment: One commenter pointed out that the revised regulations would require educational agencies and institutions to notify parents of students in attendance "and" eligible students in attendance whereas the former regulations required that parents "or" students be notified.

Discussion: The use of the word "or" can connote the idea that an educational agency or institution has an option either to notify parents of all students—whether the students are eligible or not—or to notify only eligible students. Conversely, use of "and" could be construed to require disclosure to eligible students and all parents, whether or not they were the parents of noneligible students. The word "and" is used in this section with the understanding that in the phrase "parents and eligible students" the word "parents" means the parents of students who are not eligible students. Thus, the requirements in question apply both to eligible students and to parents of students who are not eligible students.

Change: None.

Comment: One commenter, writing on behalf of an institution of higher education, believed language should be inserted to relieve notification requirements with respect to parents who reside outside the continental United States. The commenter also believed agencies and institutions should not be required to notify parents of students who have a primary or home language other than English if the student has demonstrated the minimal command of the English language required for admission to the institution.

Discussion: The statute requires that educational agencies or institutions inform the parents or students of their rights. It does not, however, require that the parents or students be notified individually; a general notification, such as by publication in a newsletter or college bulletin, is adequate. The requirement that an agency or institution notify parents of students who have a primary or home language other than English applies only to elementary and secondary schools. Institutions of higher education are not required to inform parents of rights, just eligible students.

Change: None.

Comment: One commenter asked for information on how educational agencies and institutions are to notify former students of their rights and the agency's or institution's policies.

Discussion: Both the current regulations and the revised regulations provide that notification must be given only to parents of students in attendance or eligible students in attendance. The notification of rights and policy need not be provided to former students or their parents. In any case, as noted in the discussion of the preceding comment, a general notification by publication in a newsletter or college bulletin is adequate to satisfy the statutory and regulatory requirements.

Change: None.

Section 99.10 What rights exist for a parent or eligible student to inspect and review education records?

Comment: A commenter believed there was a need to clarify the requirement that an educational agency or institution comply with a request for access to records within "a reasonable period of time, but in no case more than 45 days after it has received the request." The commenter indicated that the regulations should emphasize that it is quite often reasonable to provide access within a shorter period of time than the 45-day limit.

Discussion: The Secretary finds that, in practice, schools often provide access within a period of time which is considerably shorter than the 45-day limit. He has decided that the phrase "but in no case more than 45 days" serves to emphasize that 45 days is the maximum time allowed for compliance.

Change: None.

Comments: Two commenters were of the opinion that parents should be entitled to obtain copies of the education records of their children. Both commenters indicated that having copies of the records would provide protection against a school's losing or misplacing records. One of the commenters believed the provision would be particularly beneficial for families who move to a new location, in the event the education records are misplaced or lost in transit or in the event transfer of the records is delayed. The other commenter believed such a provision would also relieve schools of the necessity of determining when a denial of copies would effectively result in a denial of access.

Discussion: Both the current and the revised regulations set forth conditions which apply to the disclosure of information to other educational agencies and institutions in which a student seeks or intends to enroll. One of the conditions is that an agency or institution which transfers records to another agency or institution must give the parent or eligible student, upon request, a copy of the record that was disclosed. This is required by statute.

The second case in which an educational agency or institution must provide copies is when a parent or student gives a written consent for the disclosure of information from the student's education records and requests a copy of the records disclosed. This is also a statutory requirement.

The current and the revised regulations also require an educational agency or institution to provide copies of education records if a failure to do so would effectively result in a denial of access, and to include in their written policy a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of education records. These requirements, while not specifically stated in the statute, are necessary to implement the statutory requirement that an educational agency or institution shall not have a policy of denying, or effectively preventing, a parent or student the right to inspect and review the education records of the student.

The Secretary has decided that it would impose an unnecessary burden to require educational agencies or institutions to provide copies except as is now required by statute and the implementing regulations. However, nothing in the statute or the regulations would preclude an educational agency or institution from adopting a policy of providing copies in other cases, if it so chooses.

Change: None.

Comments: Two commenters believed the provision that prohibits educational agencies and institutions from destroying records if there is a pending request for access should be expanded. Both commenters believed educational agencies and institutions should be required to notify parents prior to destruction of documents and afford them an opportunity to inspect and review or obtain the records.

Discussion: The Secretary has decided that such a requirement would impose an unnecessary burden on educational agencies and institutions. In many cases, State law or agency or institutional policies and procedures prescribe a period of time in which education records are required to be maintained. Nothing in the Act or these regulations would preclude an educational agency or institution from implementing a policy of notifying parents or eligible students prior to the destruction of any education records.

Change: None.

Comments: One commenter expressed concern about the provision that accords an eligible student the right to have his or her medical treatment records reviewed by a physician or other appropriate professional of the student's choice. The commenter questioned whether postsecondary institutions would be obligated to verify the credentials of the professional chosen by the student.

Discussion: This provision is based on a requirement in the statute. The provision describes the rights of inspection and review of education records in the revised regulations. Neither the statute nor the regulations prescribe any procedures for verification.

Change: None.

Comments: One commenter believed that a provision in this section lends support to parents who claim they should have the right to have access so long as they are supporting the student in college. The provision in question reads, "* * * each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student." It is the phase "parent or eligible student" that the commenter believed lends support to the parent's claim.

Discussion: The word "parent" in the phase "parent or eligible student" means the parent of a student who is not an eligible student. Thus, at the college level, FERPA affords the eligible student the right of inspection and review. FERPA does not, however, prohibit an educational agency or institution from disclosing the education records of an eligible student to the parents of the eligible student if the student is a dependent child as defined in section 152 of the Internal Revenue Code of 1954. The provision which allows educational agencies and institutions to disclose information to parents of eligible students is set forth in the section entitled, "Under what conditions is prior consent not required to disclose information?"

Change: None.

Section 99.11 May an educational agency or institution charge a fee for copies of education records?

Comments: One commenter believed fees for copying should be limited to the actual cost of reproduction. The commenter believed that unless fees are limited to the actual cost of copying, an educational agency or institution might incorporate into the fee costs for search and retrieval of education records. A second commenter indicated that an educational agency or institution should be allowed to charge a fee for search and retrieval, if done manually, and for any other costs incurred in providing copies.

Discussion: Educational agencies and institutions are entitled to charge reasonable fees for the actual cost of reproduction, secretarial time, and postage. The Secretary considered whether to include a provision to allow educational agencies and institutions to charge a fee for search and retrieval. He decided that providing parents or students access to education records is a function that is

generally a part of the accepted and normal business of educational agencies and institutions.

Change: None.

Section 99.12 What limitations exist on the right to inspect and review records?

Comment: One commenter was concerned about the removal of the provision that required educational agencies and institutions to document the confidentiality of letters and statements of recommendation that were placed in the education records of a student prior to January 1, 1975. The commenter believed that the requirement provided the only reliable way of determining that a letter or statement was indeed "confidential."

Discussion: The provision was removed because it placed an undue burden on agencies and institutions to expect that they would be able to document the confidentiality of letters or statements that were solicited or sent and retained more than 10 years ago.

Change: None.

Comment: A commenter raised a question relating to the provision that an educational agency or institution cannot require a waiver as a condition for admission to or receipt of a service or benefit from the agency or institution. With that in mind, the commenter asked whether a placement office would be denying a service or benefit to a student by advising the student that a professor will not write a letter of recommendation or an employer will not accept a letter of recommendation, or both, unless the student signs a waiver.

Discussion: A faculty member's refusal to write a reference without a waiver would be considered an action of that individual and not of the agency or institution. A placement office would not be denying a service or benefit by advising the student of the faculty member's or employer's refusal.

Change: None.

Comment: One commenter believed the provision in this section that allows an applicant for admission to waive his or her rights under certain conditions should be removed.

Discussion: The provision is required by statute. Therefore, the Secretary has no authority to remove it from the regulations.

Change: None.

Section 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

Comments: Two commenters believed that a parent or student should have the option of inserting a statement in an education record without first going through the hearing process that is provided in this section. The commenters interpreted the statute as intending that an educational agency or institution must provide a parent or a student both an opportunity for a hearing and an opportunity to insert a statement in the record. They believed the regulations misapply the statute's intent by requiring that a parent or student go through the hearing process before exercising the right to place a statement in the record. One of the commenters stated that this requirement can result in extensive delay in cases where a parent's or student's interest in inserting a clarifying statement in the record is time-sensitive.

Discussion: The statute provides that the parents or students must be afforded "an opportunity for a hearing * * * to challenge the content of [the] records and to provide an opportunity for the correction or deletion of [data] and to insert into [the] records a written explanation * * * respecting the content of [the] records." the statute is not definitive on the question of whether the parent's or student's right to place a statement in the records exists independent of the hearing process. However, the Secretary believes that the order in which the hearing and the statement are addressed in the statute indicates that the Congressional intent was that a parent or student should exhaust the administrative remedy afforded by the hearing process before exercising the right to place an explanatory statement in the record.

After considering this issue, the Secretary has decided that to require a hearing would be burdensome in cases where an educational agency or institution and the parent or student are clearly in agreement that an explanatory statement alone is the appropriate remedy. If one or the other of the two parties disagrees, then the parents or eligible student must exhaust the remedy afforded by the hearing process before entering an explanation in the record. The Secretary finds no reason to regulate on this issue since it may be resolved by the two parties directly involved.

The Secretary has also considered whether an agency or institution could be required to allow a parent or student to insert a statement in the record if the parent or student considers the matter to be time-sensitive. There is no FERPA provision which would require an agency or institution to expedite the process in a situation where a parent or student believes time is a factor. The explanatory statement provided for in the regulations is not intended to serve any purpose other than to document the parent's or student's final position on the accuracy of an education record.

Change: None.

Comment: One commenter believed the statement that a parent or student inserts in the education record could provide an unlimited opportunity to enter a statement of disagreement. The commenter suggested that such a statement should be limited to a declaration of disagreement and that the educational agency or institution should have the right to refuse to include information beyond such a declaration.

Discussion: The statute requires that a parent or student be afforded an opportunity to insert into the records "a written explanation * * * respecting the content of [the disputed] records." The Secretary has no authority to require that the statement be limited to a declaration of disagreement.

Change: None.

Comment: One commenter suggested an amendment of the provision which requires that an educational agency or institution disclose a parent's or a student's explanatory statement whenever it discloses the portion of the record to which the statement relates. The commenter believed that educational agencies or institutions with complex or automated recordkeeping systems should not be required to

provide a copy of the explanatory statement along with a disclosed record. Instead, the commenter believed agencies or institutions should be allowed to include on the disclosed record a reference to the fact that the explanatory statement exists and will be made available on request.

Discussion: The statute requires that the statement be maintained with the record. The Secretary believes the regulatory requirement that the statement be disclosed whenever the contested record is disclosed is necessary to meet the statutory intent.

Change: None.

Section 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

Comment: One commenter believed that it seemed inappropriate to require that a student's written consent state the purpose of the release. The commenter seemed to believe that the written consent is intended to be a mechanism to restrict what he assumes is a student's right to have information released from his or her own education records. In interpreting the provision in this way, the commenter believed that requiring the student to state the purpose of the release limited his right to have the records released.

Discussion: The statute requires that the purpose of the release be stated in the written consent; therefore, the Secretary has no authority to remove the provision. The purpose of the written consent is to document that the student consented to a disclosure of information from his or her education records; the consent is not intended in any way to restrict any of a student's rights.

Change: None.

Comment: Another commenter indicated that educational agencies and institutions should be able to accept requests by telephone with proper safeguards.

Discussion: The commenter did not specify whether he or she was referring to requests made by a third party for disclosure of information from a student's education records or a request made by a parent or eligible student to disclose information to a third party. Concerning the former, the regulations do not require that a request be in writing in order for an agency or institution to disclose information pursuant to one of the statutory exclusions permitting disclosure without consent. Concerning the latter, the statute requires an agency or institution to obtain written consent of a parent or eligible student before disclosing information to a third party.

Change: None.

Section 99.31 Under what conditions is prior consent not required to disclose information?

Comment: A commenter believed the term "legitimate educational interest" should be more definitive. The commenter indicated that some institutions interpret the term too broadly while others interpret it too narrowly.

Discussion: The Secretary believes the Department could not make a definitive statement of legitimate educational interest that would apply to each school district and college and university across the nation. Each educational agency and institution must establish its own criteria, according to its own procedures and requirements, for determining when its school officials have a legitimate educational interest in a student's records.

Change: None.

Comment: Two commenters disagreed with the proposal to add language to clarify that education records may be disclosed without consent to a postsecondary institution in which a student seeks or intends to enroll. The commenters believed the addition expanded the scope of the statute and that the statutory purpose of the provision was to facilitate the transfer of records when a student moves from one public school system to another. In the case of postsecondary institutions, the commenters believed it would be more appropriate to require consent of the parent or the student before transferring records.

Discussion: The current regulations did not clearly specify that postsecondary educational institutions are covered by the exception. The provision has been applicable in practice to postsecondary institutions since enactment of the law. The change to this provision clarifies that "schools" include institutions of postsecondary education.

Change: None.

Comment: A commenter asked that the definition of "financial aid" be explicitly broadened to include all debts owed to an institution as a result of the student's participation in the institution's programs. The commenter strongly believed that Congress did not intend that an institution should be restricted by the law from collecting any and all debts owed it by students.

Discussion: The statute was intended to provide parents or students some control over the disclosure of information from the student's education records. With certain specified exceptions, including the provision with regard to financial aid, information cannot be disclosed without a student's written consent. The statute refers to disclosure "in connection with a student's application for, or receipt of, financial aid." In that context, the definition of financial aid could not be broadened to include other debts owed the institution.

Change: None.

Comment: One commenter, a representative of a State Department of Education, believed a provision should be included to acknowledge that State law may in some cases be more protective of students' privacy than Federal law, particularly in restricting the conditions under which information can be disclosed without the parent's written consent.

Discussion: The current and revised regulations provide that a State is not prevented from further limiting the number or type of State or local officials to whom disclosures may be made without consent. The regulations also state under the section "What are the rights of eligible students?" that the law and regulations "do not prevent educational agencies or institutions from giving students rights in addition to those given to parents of students." The Secretary has decided that no regulatory purpose would be served by including a provision such as suggested by the commenter.

Change: None.

Comment: A commenter suggested a change in the provision that allows disclosure "to organizations conducting studies for, or on behalf of, educational agencies or institutions [if] the study is conducted in a manner that does not permit personal identification of parents or students by individuals other than representatives of the organization * * *." The commenter believed the word "by" should be changed to "to".

Discussion: The word "by" is used in the statute, and the Secretary believes the meaning is clear.

Change: None.

Comment: None.

Discussion: In the notice of proposed rulemaking (NPRM) for these regulations the phrase "parents or students" was used in Sec. 99.31(a)(6)(ii)(A). However, the statute requires organizations that receive information under this exception to the consent requirement to protect the information "in such a manner as will not permit the personal identification of students and their parents * * *."

Change: The word "or" has been changed to "and" to ensure that both groups are fully protected.

Comment: A commenter believed the educational agency or institution should be relieved in some cases of the requirement of making a reasonable effort to notify a parent or student in advance of compliance with a subpoena. The commenter indicated that in legal actions to which the student is a party, the court process itself requires that any subpoena be served on the opposing party, thereby making any notification effort by the educational agency or institution superfluous.

Discussion: The statutory language requires that parents or students be notified of "all such orders or subpoenas" in advance of compliance. The language was modified in the course of promulgating the current regulations to require that the agency or institution "make a reasonable effort to notify * * *." The modification was made in recognition that it would be difficult in many cases for the agency or institution to comply with the statutory requirement and in the belief that the modification was in accord with the Congressional intent.

The Secretary has decided that he has no authority to relieve educational agencies or institutions of the statutory requirement that parents and students be notified of "all such orders or subpoenas." The Secretary has also decided that even in cases where the parent or student brings the action, the notification serves to assure that the party serving a subpoena is in fact acting on behalf of the parent or student.

Change: None.

Comment: One commenter suggested that a condition be added to allow a postsecondary institution to contact a parent of an eligible student without the student's consent if the institution suspects that the student has a physical or emotional problem of which the university believes the parent may be unaware and that affects the student's academic or campus life.

Discussion: The Secretary has no authority to regulate an exception to the statutory requirement that at age 18 the rights afforded by FERPA transfer from the parent to the student. However, if an institution determined that the circumstances of a situation were such as to constitute a health or safety emergency and if the university decided that the parent is the party who is in the best position to deal with the emergency, then the disclosure could be made under the section of the regulations that provides for disclosure in those emergencies.

Change: None.

Comment: Four commenters believed a condition should be added to permit disclosure without a student's consent if the agency or institution has reason to believe that the student has provided inaccurate or misleading information concerning his or her academic record to another educational agency or institution, to an employer, to a professional association, or to a governmental agency to whom the student applies for benefits or services.

Another commenter believed educational agencies and institutions should be allowed to disclose information without prior written consent to government officials, including U.S. Senators and Representatives, State legislators, and governors, who have been contacted by a parent or student who believes his or her rights under this law have been violated. The commenter indicated that the agencies or institutions are unable to respond to, or to defend themselves against, the parent's or student's allegations because they cannot release information to the government officials without the parent's or student's written consent.

Discussion: The Secretary understands the concerns of the commenters and has carefully considered whether provisions could be included in the regulations to address the problems. He has decided that the statute is specific in stating the conditions under which disclosure can be made without consent and that he has no authority to include the provisions proposed by the commenters.

Change: None.

Section 99.32 What recordkeeping requirements exist concerning requests and disclosures?

Comment: A commenter suggested that the term "list" be changed to "record" in this section. The commenter indicated that as long as a record of requests for and disclosures of information is maintained, the form of the record is irrelevant.

Discussion: The Secretary did not intend to prescribe the form of the record; the intent was to suggest a convenient way to maintain the information. However, in order to conform to the statutory language, the term "record" will be used.

Change: The term "record" has been substituted for "list."

Comment: One commenter stated that keeping a record of requests for disclosure is impractical and implies that a record must be kept even for requests that are denied. The commenter also believed it impractical to require the record of disclosure to be kept with the education records of the student, inasmuch as most institutions maintain records in computerized formats. Another commenter believed

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maintaining a record of disclosures without consent is self-incriminating. The commenter also stated that institutions should be free to establish their own retention schedule.

Discussion: The statute requires each educational agency and institution to maintain a record, kept with the education records of each student, that will indicate all parties who have requested or obtained access to a student's education records, including those parties to whom the statute permits disclosure without consent. While the statute states that the record should be kept with the education records of a student, it does not intend to require the agency or institution to keep it in one file or in one location. However, it does intend to require the agency or institution to make the record available to a parent or student as part of the parent's or student's general access to the education records. Since parents or students should be able to learn of those parties interested in the records, the record of disclosure should be maintained as long as the agency or institution maintains records on the student.

Change: None.

Comment: A commenter asked whether the placement office of an educational agency or institution would be required to keep a list (record) of all parties to whom a student's credential files were sent if the student had given a blanket consent to release his or her education records without specifying the individual parties.

Change: None.

Comment: One commenter questioned the recordkeeping requirement concerning disclosure and redisclosure of information to parties if prior written consent for disclosure is not required. An educational agency or institution may disclose information to a party if consent is not required with the understanding that that party may redisclose the information to another party to whom information can be disclosed without consent. The agency or institution must keep a record of the parties to whom the disclosure and redisclosures are made and the legitimate educational interests all parties have in the records. The commenter believed the recordkeeping requirement places an undue burden on institutions and that most reasonable approach is to assert that no information may be redisclosed.

Discussion: The Secretary did not intend any change in the recordkeeping requirement. At the time the final regulations were issued in 1976, the Department had considered whether student consent should be required if disclosure by a party excepted from the consent requirement is to another party excepted from the consent requirement—even though the institution could disclose information without consent to either excepted party. The Secretary considered, for example, whether an institution that disclosed information to the Department of Education under the Guaranteed Student Loan Program as permitted by the "financial aid" exception, would be required to tell the Department of Education not to make a future disclosure of that information to the bank that loaned the money under the program—even though the bank could obtain the information directly from the institution under the same exception.

If the Department of Education could disclose the information freely to other excepted parties, there would be no harm done to the consent requirement. However, the student would no longer have a means to discover all of the parties outside the institution who had had access to his or her records without consent. To remedy this problem, the Secretary authorized an institution to disclose information to excepted parties with the understanding it would be redisclosed to other excepted parties, but only if a record of access were kept for all of those parties.

The Secretary did not intend to impose a recordkeeping burden on educational institutions. Rather, the intent was to give a better understanding of the disclosure and recordkeeping requirement with regard to excepted parties.

Section 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

Comment: A commenter believed an example should be inserted in this section to specify that the phrase "is enrolled in or receives service from the other agency or institution" encompasses consortia, cross-enrollment, joint-enrollment, work-study, and coordination of such programs among postsecondary institutions and participating agencies and institutions.

Discussion: The Secretary believes the provision, as it now stands, can clearly be construed to encompass the examples included in the comment.

Change: None.

Comment: None.

Discussion: The proposed regulations changed the definition of student to include former students in order to make clear that most rights accorded students in attendance also apply to former students. In cases where the provisions of a section do not apply to former students, the term "students in attendance" is used. The provision in this section that, in the proposed regulations, stated "an educational agency or institution may disclose an education record of a student to another educational agency or institution if the student is enrolled in or receives services from the other agency or institution" would extend the provision beyond the statutory authority and would indicate that an agency or institution could disclose information on former students without consent to another agency or institution if the former student is enrolled in or receives services from the other agency or institution.

Change: The provision has been clarified to state that it applies only to students in attendance.

Section 99.36 What conditions apply to disclosure of information in health and safety emergencies?

Comments: One commenter believed that the regulations, in stating that the provisions of the section "shall be strictly construed," rightly leaves it to the educational agency or institution to develop its own definition of emergency. The commenter viewed the revision as helpful to educational agencies and institutions and as a step to assure an appropriate deregulation and an appropriate recordkeeping process within the institution on defining when an emergency may arise. Another commenter believed the factors that were removed from the health and safety emergency section in revising the regulations should be reinserted. The commenter believed that the statute specifically directs the Secretary to issue regulations

concerning disclosure in a health or safety emergency and also believed that the criteria provided useful guidance.

Discussion: The statute, in setting forth the conditions in which personally identifiable information from an education record or records can be disclosed without a parent's or student's consent, states that "[such a disclosure may be made], subject to regulations of the Secretary in connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons." The regulations required that educational agencies or institutions include four specific criteria in the factors to be taken into account in determining whether personally identifiable information from the education records of a student could be disclosed under the section.

The Secretary based his decision to remove the nonstatutory criteria from the regulations on his belief that educational agencies and institutions are capable of making those determinations without the need for Federal regulation. It is the Secretary's opinion that Congress did not intend to require that regulations be promulgated that would impose burdensome requirements on agencies and institutions. He believes the requirement that agencies and institutions strictly construe the provision fully meets the Congressional intent. Nothing in the statute or legislative history prohibits an agency or institution from considering the four specific criteria that have been removed.

Change: None.

Section 99.37 What conditions apply to disclosing directory information?

Comment: One commenter thought the use of the word "and" in the text of the first paragraph under the section was incorrect.

Discussion: In the proposed regulations the word "and" was inserted in place of the word "or" in the phrase "* * * parents of students in attendance and eligible students in attendance * * *." However, replacing the word "or" with the word "and" does not remove all possibility for misinterpreting the provision. As clarification, we note that in the phrase "parents of students in attendance," the word "students" means students who are not eligible students. Thus, the educational agency or institution must notify both all eligible students and the parents of all students who are not eligible students.

Change: None.

Comment: A commenter, a representative of a postsecondary educational institution, believed that the refusal that students are allowed to exercise over the designation of directory information should be limited to the student's address and telephone number. The commenter indicated that the student's right of refusal has in some cases enabled students to commit fraudulent acts with a lessened chance of discovery.

Discussion: The statute provides students the right to refuse to allow the educational agency or institution to designate any or all of the items of information about the student as directory information.

Change: None.

Section 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

Comment: One commenter believed the Department of Education should give some direction to State schools or institutions that are mandated by State law to allow a student to have access to confidential letters of recommendation to which the student, under FERPA, has waived his or her right of access. The commenter indicated that if placement directors send a credential file that contains confidential letters of recommendation to schools or institutions in States that have those mandates, the schools or institutions will return the file on the basis that the confidentiality of the letters cannot be protected.

Discussion: The Secretary is unable to advise State schools or institutions with respect to the laws of each State. With respect to the Federal law, the statute provides that the access rights afforded by the law shall not operate to make letters and statements of recommendation available to students in institutions of postsecondary education who have executed a valid waiver. Under theses provisions, an educational agency or institution is not precluded from providing a student access to a letter or statement of recommendation. Therefore, if a State law requires that a State institution afford a student access to letters or statements of recommendation, the Federal law would not interfere, irrespective of whether the student has executed a valid waiver of his or her right.

Change: None.

Section 99.64 What is the complaint procedure?

Comment: A commenter proposed that the intended meaning of the word timely as it appears in the second paragraph of this section should be defined.

Discussion: The Secretary has decided not to include a definition in the regulations for two reasons. First, the word appears only once in the regulations. Secondly, the meaning of the word would depend largely on the circumstances which are peculiar to each case. A complaint might involve complex circumstances and attempts by a complainant to resolve the issue independently that might reasonably have delayed the filing of the complaint. Such a complaint would be considered timely. Another complaint might involve an allegation of a violation that occurred many years ago and was never pursued despite the full knowledge of the student. In this case, the complaint would not be considered timely.

Change: None.

Section 99.67 How does the Secretary enforce decisions?

Comment: A commenter believed the law should be changed to provide that the Secretary may decide to withhold Federal funding under programs in addition to those administered by the Department of Education.

Discussion: The Secretary has no authority to withhold Federal funds under programs in other Federal agencies.

Change: None.

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PART 600-INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A-General

Authority: 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

Subpart A-General

Sec. 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an institution or school qualifies as an eligible institution under the Higher Education Act of 1965, as amended (HEA). An eligible institution may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1085 (a), (b), and (e), 1088 (b) and (c), 1094(c)(3) and 1141(a))

Sec. 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition which a nationally recognized accrediting agency or association grants to an institution, school, or educational program which meets certain established qualifications and educational standards.

Clock hour: A period of time consisting of—

(a) A 50-minute to 60-minute class, lecture, or recitation in a 60-minute period;

(b) A 50-minute to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or

(c) Sixty minutes of preparation in a program of study by correspondence.

Educational program: A legally authorized postsecondary program of organized instruction or study which leads to an academic or professional degree, vocational certificate, or other recognized educational credential. However, the Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: instruction provided by other institutions or schools, examinations provided by agencies or organizations, or other accomplishments such as "life experience."

Eligible institution: Includes—

(a) An institution of higher education, as defined in Sec. 600.4;

(b) A proprietary institution of higher education, as defined in Sec. 600.5;

(c) A postsecondary vocational institution, as defined in Sec. 600.6; and

(d) A vocational school, as defined in Sec. 600.7.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency or association: An agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the Federal Register.

Nonprofit institution: An institution that—

(a) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(b) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(c) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax deductible in accordance with section 501(c)(3) of the Internal Revenue Code.

One-year training program: An educational program that is at least—

(a) Twenty-four semester or trimester hours or units, or 36 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a program of study by correspondence.

Part B loan programs: The Guaranteed Student Loan (GSL), PLUS, Supplemental Loans for Students, and Consolidated Loan Programs. Each of these loan programs is authorized under Part B of Title IV of the HEA.

Preaccredited: A status that—

(a) A nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time; and

(b) The Secretary determines is the exclusive indication under sections 435(b)(5)(A) and 1201(a)(5)(A) of the HEA that an institution will meet the accreditation standards of a nationally recognized accrediting agency or association within a reasonable time.

Program of study by correspondence: An educational program offered principally by mail by an institution. Under this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training.

Recognized equivalent of a high school diploma:

(a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

Recognized occupation: An occupation that is—

(a) Listed in an "occupational division" of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor, or

(b) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree or certificate.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

Six-month training program: Either—

(a) An educational program that is at least—

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a program of study by correspondence; or

(b) An educational program which the Secretary determines is at least a six-month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a) (1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1071 et seq.; 1078-2, 1085, 1088, and 1141 and 26 U.S.C. 501(c))

Note: definition of "clock hour" amended July 23, 1993, effective July 1, 1994.

Sec. 600.3 Special conditions.

For the purpose of Secs. 600.4, 600.5, 600.6, and 600.7:

(a) The Secretary considers an institution other than one offering only a program of correspondence to be "in a State" only if the institution's campus or place of instruction is physically located in that State.

(b) The Secretary considers an institution offering only a program of study by correspondence to be located only in the State in which its administrative office is located if the program does not include a period of residential training. If the program includes a period of residential training, the Secretary considers the institution to be located and the State in which its administrative office is located and the State in which its residential program is located.

(c)(1) If a State requires an institution to measure its educational programs in clock hours in order to be legally authorized in that State to provide a program of education beyond secondary education, the Secretary considers that institution is legally authorized in that State to provide a program of education beyond secondary education only if the institution measures its educational programs in clock hours.

(2) If a State requires a vocational school to measure its vocational or technical education programs in clock hours in order to be legally authorized in the State to provide a program of postsecondary vocational or technical education, the Secretary considers that vocational school to be legally authorized to provide a program of postsecondary vocational or technical education in that State only if the vocational school measures its vocational or technical programs in clock hours.

(d)(1) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a program of education beyond secondary education in a State, the State requires an institution to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(2) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a postsecondary vocational or technical education program in a State, the State requires a vocational school to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(Authority: 20 U.S.C. 1085 (b) and (c), 1088 (b) and (c), and 1141(a))

Sec. 600.4 Institution of higher education.

(a) An institution of higher education is a public or private non-profit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, if the institution seeks to participate in a program other than a Part B loan program, have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is located;

(4) Provides an educational program—

(i) For which it awards an associate, baccalaureate, graduate, or professional degree, or other recognized educational credential;

(ii) Which is at least a two-year program acceptable for full credit toward a baccalaureate degree; or

(iii) Which is at least a one-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in Sec. 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution—

(A) Is a public postsecondary vocational educational institution; and

(B) Seeks to participate only in Federal student assistance programs.

(b)(1) An institution, other than an institution that is eligible to participate only in a Part B loan program, that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these persons have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section.

(3) An institution shall retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(c) Notwithstanding the provisions in paragraph (a) of this section, the Secretary does not determine an institution

to be eligible to apply to participate in the Part B loan programs if the institution uses or employs commissioned salespersons to promote the availability of Part B loan program loans at that institution.

(Authority: 20 U.S.C. 1085, 1094(c)(3), and 1141(a))

Sec. 600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution which—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(5) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c)(1) A proprietary institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section.

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1068(b))

Note: (a)(7) amended, (b) redesignated (c) and amended and new paragraph (b) added December 3, 1992, effective January 29, 1993.

Sec. 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located.

(4) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in Sec. 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State, if the institution is a public postsecondary vocational educational institution.

(6) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training

program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education; and

(iii) Does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c)(1) A postsecondary vocational institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1088 and 1094(c)(3))

Note: (a)(6) amended, (b) redesignated (c) and amended, and new paragraph (b) added December 3, 1992, effective January 29, 1993.

Sec. 600.7 Vocational school.

(a) A vocational school is a business or trade school, technical institution, or other technical or vocational school which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have completed or left elementary or secondary school; and

(ii) Have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized in the State in which the school is physically located to provide, and provides within that State a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills to fit individuals for useful employment in recognized occupations;

(ii) Is not less than—

(A) Eight semester or trimester hours or units, or 12 quarter hours or units, at a school using credit hours or units to measure the academic progress; or

(B) Three hundred clock hours of supervised training at a school using clock hours to measure progress;

(iii) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion of a minimum of 300 clock hours in not less than six months; and

(iv) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration:

(4) Is—

(i) Accredited by a nationally recognized accrediting agency or association; or

(ii) In the case of a public vocational school, approved by a State agency that the Secretary recognizes, by listing in the Federal Register, in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State;

(5) Has been—

(i) In existence for two years; or

(ii) Has been specifically determined by the Secretary to be an eligible location of a vocational school despite not having been in existence for two years; and

(6) Does not use or employ commissioned sales persons to promote the availability of Part B loan program loans at that school.

(b) For purposes of this section, the Secretary considers a school to have been in existence for two years only if it has been legally authorized to provide and has provided, a continuous training program to fit individuals for useful employment in recognized occupations during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(c)(1) A school that admits as regular students persons who do not have a high school diploma or its recognized equivalent shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these persons have the ability to benefit from the training it offers.

(2) A school must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not complete, or who left, elementary or secondary school satisfied the school's standards under paragraph (c)(1) of this section.

(3) A school must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1085 and 1094(c)(3))

Sec. 600.8 Transfer-of-credit alternative to accreditation.

(a) For an unaccredited public or private nonprofit institution to satisfy the requirements of Sec. 600.4(a)(5)(ii) or Sec. 600.6(a)(5)(ii), the Secretary must determine that—

(1) At least three accredited institutions, which satisfy the conditions in paragraph (c) of this section, have a policy of accepting on transfer the credits of a student who transfers from the unaccredited institution on the same basis as they accept on transfer the credits of a student who transfers from any accredited institution;

(2) Within the three years preceding the date the unaccredited institution applies for a determination that it satisfies the requirements of Sec. 600.4(a)(5)(ii) or Sec. 600.6(a)(5)(ii)—

(i) At least twelve of the unaccredited institution's regular students or former regular students transferred to at least three of the accredited institutions identified under paragraph (a)(1) of this section, with a minimum of four transfer students to each accredited institution; and

(ii) Each of at least three of the accredited institutions to which the twelve students transferred accepted the credits of the students who transferred for credit on the same basis as it accepted the credits of students who transferred from any accredited institution.

(b) For the purposes of paragraph (a)(2) of this section, the Secretary considers that a student has transferred to an accredited institution if—

(1) The student has enrolled as a regular student in an accredited educational program in the accredited institution;

(2) The student no longer remains enrolled as a regular student at the unaccredited institution;

(3) The student has attended classes at the accredited institution for a period of time that exceeds the date beyond which the student would, upon withdrawal, qualify for the maximum refund of tuition and fees available to a student who attends at least one day of class; and

(4) The accredited institution has officially applied the credits earned by the student at the unaccredited institution toward a degree or certificate that it offers.

(c) To qualify under paragraph (a) of this section, an accredited institution must—

(1) Offer an educational program that is at least as long, in terms of academic years, academic terms, or clock hours, as the longest educational program offered at the unaccredited institution;

(2) Offer a degree or certificate at least as advanced as the highest degree or certificate offered at the unaccredited institution; and

(3) Apply the transfer credits toward an accredited degree or certificate program in which the transfer students will not constitute a majority of the students enrolled.

(d) If an unaccredited institution that was previously accredited or preaccredited has lost that status and applies for a determination that it satisfies the requirements of this section—

(1) The students described in paragraph (a)(2) of this section must have earned the transferred credits from the unaccredited institution after the institution lost its accreditation or preaccreditation; and

(2) Each accredited institution described in paragraph (a) of this section must know, when it accepts the credits of the transfer students, that the applicant institution lost its accreditation or preaccreditation before the credits to be transferred were earned.

(e)(1) The applicant unaccredited institution shall provide sufficient information and documentation to enable the Secretary to determine whether the unaccredited institution satisfies the requirements of this section. The information and documentation must include, but is not limited to—

(i) Information as to the length of the educational programs offered by the applicant unaccredited institution and the highest degree or certificate it offers;

(ii) The names and addresses of the institutions described in paragraph (a) of this section, and for each institution, the length of its educational programs and the degrees and certificates it offers;

(iii) The names of students described in paragraph (a)(2) of this section, and the dates those students attended their first classes at the applicant institution as well as the accredited institution;

(iv) Enrollment records from each of the institutions identified in accordance with paragraph (e)(1)(ii) of this section for the transfer students identified in accordance with paragraph (e)(1)(iii) of this section;

(v) An official publication of each institution identified in accordance with paragraph (e)(1)(ii) of this section that contains that institution's policy with regard to the acceptance of credits on transfer from accredited and unaccredited institutions;

(vi) Whether the applicant has ever been accredited or preaccredited and if so, the date on which it lost that accreditation or preaccreditation;

(vii) A certified statement from the dean of admissions or the registrar of the applicant unaccredited institution indicating that the institution has not paid, nor will it pay, to any accredited institution identified in accordance with paragraph (e)(1)(ii) of this section, any remuneration or compensation of any kind in exchange for accepting its credits, students or former students; and

(viii) A certified statement from the dean of admissions or registrar of each accredited institution identified in accordance with paragraph (e)(1)(ii) of this section indicating—

(A) That the policy of that institution is to accept the credits of students transferring from the applicant unaccredited institution for credit on the same basis that it accepts the credits of students transferring from any accredited institution;

(B) That the institution has not received and will not receive remuneration or compensation of any kind in exchange for accepting the unaccredited institution's credits or students;

(C) That the students identified in accordance with paragraph (e)(1)(iii) of this section transferred as regular students into accredited educational programs at the institution by enrolling and attending classes in those programs;

(D) The dates of enrollment of each of the students identified in accordance with paragraph (e)(1)(iii) of this section; and

(E) That the institution knows that the unaccredited institution is unaccredited and, if applicable, that the unaccredited institution has lost its accreditation or preaccreditation and the date of that loss.

(2) The Secretary does not begin to evaluate whether the unaccredited institution satisfies the requirement of this section until the applicant unaccredited institution provides all the information and documentation required for that determination.

(3) The Secretary may require, as a condition for making a determination that the applicant unaccredited institution has satisfied the requirements of paragraph (a) of this section, that any of the accredited institutions identified in accordance with paragraph (e)(1)(ii) of this section confirm the accuracy of the information or documentation provided by the applicant which pertains to that accredited institution.

(f)(1) If the Secretary determines that an institution satisfies the requirements of this section, that determination remains in effect for three years.

(2) An institution may apply under this section for a renewal of its transfer-of-credit determination at the end of the three-year period. In that renewal application, the institution must identify an additional twelve students who have transferred, as described in paragraph (a)(2)(i) of this section.

(Authority: 20 U.S.C. 1085(b) and 1141(a))

Sec. 600.9 Written agreement between an eligible institution and another institution or organization.

(a) Subject to the conditions in paragraphs (b), (c), and (d) of this section, an eligible institution described in paragraph (b) of this section may, without losing its eligibility under this part, enter into a written agreement with another institution or organization under which that other institution or organization provides all or part of the educational program of students enrolled in the eligible institution.

(b) The provisions of this section apply only to an eligible institution that—

(1)(i) Is accredited or preaccredited by a nationally recognized accrediting agency or association; or

(ii) Is approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State; and

(2) Gives credit to students enrolled in the portion of the educational program that is provided by the other institution or organization on the same basis as if it provided that portion of the program itself.

(c) If an eligible institution enters into a written agreement with another eligible institution, there is no limit on the portion of a student's educational program that may be provided under the agreement.

(d) If an eligible institution enters into an agreement with an institution or organization that is not an eligible institution—

(1) The ineligible institution or organization may provide up to 25 percent of the educational program of a student enrolled in the eligible institution; or

(2) The ineligible institution or organization may provide more than 25 percent but not more than 50 percent of the educational program of a student enrolled in the eligible institution if—

(i) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership or corporation; and

(ii) The eligible institution's nationally recognized accrediting agency or association or recognized State agency specifically determines that the institution's agreement meets the agency's or association's standards for the contracting out of educational services.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1094)

Sec. 600.10 Date, extent, duration, and consequence of eligibility.

(a) Date of eligibility. If the Secretary determines that an applicant satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution as an eligible institution as of the date the Secretary receives all the information necessary to make that eligibility determination.

(b)(1) Extent of eligibility. If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this subpart, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this subpart,

the Secretary extends eligibility only to those educational programs and locations which meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent in accordance with Sec. 600.21.

(3) Eligibility does not extend to any location that the institution establishes after it receives the eligibility designation. If an eligible institution seeks to establish eligibility for a new location, the institution shall apply under Sec. 600.20.

(c) Subsequent additions of educational programs. (1) If an institution that has been designated by the Secretary as an eligible institution adds educational programs after that designation, the institution need not apply to the Secretary to have those additional programs designated as eligible programs but may determine on its own whether those programs satisfy the relevant statutory and regulatory eligibility requirements.

(2) If an institution incorrectly determines that its educational program satisfies the applicable statutory and regulatory eligibility provisions, the institution shall be liable to repay to ED all the student financial assistance and other ED program funds it or its students received who were enrolled in that educational program.

(d) Duration of eligibility. In addition to the requirements of Sec. 600.30, an institution shall renew its designation of eligibility, including all its educational programs and all its locations, every four years.

(e) Consequence of eligibility. (1) An eligible institution may apply to participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under Sec. 600.21.

(2) Merely by virtue of its designation as an eligible institution in the eligibility notice it receives under Sec. 600.21, an institution is not automatically eligible to—

(i) Participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under Sec. 600.21; or

(ii) Receive funds under any program authorized by the HEA.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Sec. 600.11 Ability to benefit.

(a) If an institution admits as a regular student a person who does not have a high school diploma or its equivalent, the institution shall determine, at the time of admission, whether that person has the ability to benefit from the education or training the institution offers.

(b) An institution shall determine whether a person described in paragraph (a) of this section has the requisite ability by—

(1) Administering to the person a nationally recognized, standardized, or industry developed test, subject to criteria of the institution's accrediting agency or association, that measures the applicant's aptitude to successfully complete the educational program for which the student has applied; or

(2) Determining that the person has the capability to successfully complete a GED preparation program by the end of the first year of the course of study or prior to the student's certification or graduation from the program of study, whichever is earlier; or

(3) Placing the person, after counseling or failure to meet the institution's admission's testing requirement, in an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

(Authority: 20 U.S.C. 1085, 1088, 1091, and 1141)

Subpart B-Procedures for Establishing Eligibility

Sec. 600.20 Application procedures.

(a) An institution that wishes to establish its eligibility to apply to participate in any program authorized by the HEA must first apply to the Secretary for a determination that it qualifies as an eligible institution.

(b) An institution applying for designation as an eligible institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of its eligibility.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Sec. 600.21 Eligibility notification.

(a) The Secretary notifies an institution in writing of the Secretary's determination—

(1) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate definition in Secs. 600.4 through 600.7; and

(2) Of the HEA programs for which it is eligible to apply for participation.

(b) If only a portion of the applicant qualifies as an eligible institution, the Secretary specifies in the notification of eligibility letter only the locations or programs which qualify.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Subpart C-Maintaining Eligibility

Sec. 600.30 Institutional changes requiring review by the Secretary.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary in writing, at an address specified by the Secretary in a notice published in the **Federal Register**, at the same time that it notifies its accrediting agency or association, but not later than 10 days after the change occurs, of any change in the following information provided in the institution's eligibility application:

(1) Its name.

(2) Its address.

(3) The name, number, and address of locations other than the main campus at which it offers educational services.

(4) Its ownership, if that ownership change results in a change in control of the institution.

(5) The establishment of written agreements with other institutions or organizations in accordance with Sec. 600.9(b)(2).

(6) A person's ability to affect substantially the actions of the institution, if the person did not previously have that ability. The Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(i) Holds at least a 25% ownership interest in the institution;

(ii) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(iii) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(iv) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(v) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(vi) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution; or

(B) An entity that holds at least a 25% ownership interest in the institution.

(b) In the case of any change in the information that is described in paragraph (a)(6) of this section, an eligible institution that is owned by a publicly traded corporation shall notify the Secretary at the same time that the institution notifies the institution's accrediting agency or association, but not later than ten days after the corporation learns of the change.

(c) The Secretary notifies the institution in writing if the change affects the institution's eligibility.

(d) The institution's failure to inform the Secretary of the information described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against it, including the loss of its eligibility.

(e) For the purposes of this section, an ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term ownership interest includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor; or

(iii) A profit-sharing plan, provided that all employees are covered by the plan.

(f) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

(Approved by the Office of Management and Budget under control number 1840-0098).

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Note: paragraphs (b) and (c) redesignated as paragraphs (c) and (d) respectively; paragraph (a) amended; and paragraphs (a)(6), (b), (e), and (f) added July 31, 1991, effective February 26, 1992. Paragraph (a) amended December 3, 1992, effective January 29, 1993.

Sec. 600.31 Change in ownership resulting in a change of control.

(a) An eligible institution, or a previously eligible institution that participated in any HEA program, that changes ownership resulting in a change of control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all HEA program funds which the institution received and improperly expended before the effective date of the change of control;

(2) The new owner agrees—

(i) To abide by the institution's policy regarding refunds of institutional charges to students in effect before the effective date of the change of control for students who were enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3). The institution submits individual statements for the new owners listing assets, liabilities, and net worth and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year; or

(ii) An audit for the institution's latest complete fiscal year prepared by a licensed certified public accountant;

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient;

(5) The institution provides for the retention of all records required in connection with its designation as an eligible institution and its participation in any HEA program. These records must include a copy of the latest prior application requesting a determination of institutional eligibility for HEA programs, the Secretary's eligibility notification received as a result of that application, and the institution's participation agreement for the student aid programs; and

(6) If the institution has been divided into two or more institutions, all of the resulting institutions jointly have notified the Secretary in writing as to which one of the resulting institutions they consider to be the same institution.

(b) The Secretary may require that the profit and loss statement and balance sheet provided for in paragraph (a)(3)(i) of this section be audited and certified by a licensed certified public accountant.

(c) For the purposes of this part, a change in ownership of an institution that results in a change of control means any action by which a person or corporation obtains new authority to control the actions of that institution. That action may include, but is not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the controlling interest of stock or assets of the institution to its parent corporation; or

(6) The transfer of the liabilities of an institution to its parent corporation.

(d)(1) Except as provided in paragraph (d)(2) of this section, the Secretary considers an eligible institution, or a previously eligible institution that has participated in any HEA program, that changes ownership resulting in a change of control to be a new institution for the purpose of establishing eligibility if the new owner or owners of the institution have been convicted of or have pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or have been judicially determined to have committed fraud involving Federal funds.

(2) The Secretary may consider an eligible institution or a previously eligible institution to be the same institution for the purpose of establishing institutional eligibility under this part, if—

(i) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime;

(ii) At least five years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination; and

(iii) The funds that were fraudulently obtained or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid.

(e) If the Secretary considers an institution to be a new institution under this section, the institution under its new owner or owners must meet all applicable requirements for establishing eligibility, including, if applicable, the two years in existence requirement.

(Authority: 20 U.S.C. 1085, 1088(b), and 1094)

Note: (a)(4) and (a)(5) amended and (a)(6) added December 3, 1992, effective January 29, 1993.

Sec. 600.32 Eligibility of additional locations.

(a) If an eligible institution seeks to establish eligibility for an additional location, the institution shall apply under Sec. 600.20 for a determination of whether the location qualifies as an eligible location.

(b) Except as provided in paragraphs (c) and (d) of this section, to qualify as an eligible location, the additional location must satisfy the applicable requirements of this section and Secs. 600.4 through 600.7.

(c) To qualify as an eligible location, an additional location is not required to satisfy the requirement under Sec. 600.5(a)(7), Sec. 600.6(a)(6), or Sec. 600.7(a)(5)(i), unless—

(1) The location is a facility of an institution that has closed or ceased to provide educational programs (except during normal vacation periods);

(2) The applicant institution acquired, either directly from the institution that has closed or ceased to provide educational programs or through an intermediary, the assets at that location; and

(3) The institution from which the applicant institution acquired the assets of the location—

(i) Owes a liability on improperly expended or unspent HEA program funds or for refunds of institutional charges to students; and

(ii) Is not making payments in accordance with an agreement to repay that liability, if the institution has entered into such an agreement.

(d) Notwithstanding paragraph (c) of this section, an additional location is not required to satisfy the requirement

under Sec. 600.5(a)(7), 600.6(a)(6), or 600.7(a)(5)(i) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent HEA program funds received by the institution that has closed or ceased to provide educational programs; and

(2) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(e) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under Sec. 600.21.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Note: Section 600.32 added July 31, 1991, effective September 14, 1991.

Subpart D-Loss of Eligibility

Sec. 600.40 Loss of eligibility.

(a)(1) An institution, or a location or educational program of an institution, ceases to be eligible to participate in programs authorized under the HEA on the date on which the institution, location, or program, as applicable, fails, or ceases to meet an applicable eligibility requirement of this part.

(2) An institution or location ceases to be eligible to participate in programs authorized under the HEA on the date on which the institution ceases offering educational programs, or, with respect to a location, ceases offering educational programs at that location, except for normal vacation periods.

(b) If the Secretary designates an institution as an eligible institution on the basis of inaccurate information or documentation, the Secretary's designation is void from the date it was made and the institution never qualified as an eligible institution.

(c) If an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the U.S. Department of Education within 30 days; and

(2) It becomes ineligible to continue to participate in any HEA program.

(Authority: 20 U.S.C. 1085, 1088 and 1141)

Note: (a) amended March 10, 1993, effective April 28, 1993. Paragraph (a)(1) corrected March 23, 1993.

Sec. 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that an institution as a whole, or at one or more of its locations, that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may, in accordance with the procedural provisions in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (4) and (c) through (f), and 668.91—

(1) Terminate the eligibility of the institution as a whole or as to a location to participate in one or more title IV, HEA programs;

(2) Limit the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.25 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action with regard to the institution's participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may, in accordance with the procedural provisions described in paragraph (a) of this section—

(1) Terminate the eligibility under one or more title IV, HEA programs of the institution as to that educational program, and limit the institutions's authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.25; and

(2) Initiate an emergency action with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under the applicable title IV, HEA program by the institution—

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment,

delivery, or disbursement of funds under the applicable title IV, HEA program by the institution—

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution shall not certify applications for, make awards or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

(1) In accordance with the requirements of 34 CFR 668.25(c) with respect to students enrolled in the ineligible institution, location, or educational program; and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.25 (a) and (b).

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.25 (a) and (b).

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

(iv) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) For purposes of this section, the title IV, HEA programs are those listed at 34 CFR 668.1(c).

(f) For purposes of this section, designation of eligibility by the Secretary with regard to an educational program includes a determination by the institution pursuant to Sec. 600.10(c)(1) that an educational program is an eligible program.

(g)(1) In any proceeding under this section to terminate the eligibility of an institution, location, or educational program on the ground that the institution, location, or educational program no longer meets applicable requirements in this part with regard to accreditation or legal authorization, the sole issue that may be considered is whether the institution lacks the requisite accreditation or legal authorization. The hearing official has no authority to consider challenges to the propriety of the action of the accrediting agency or governmental agency in revoking, terminating, or modifying that accreditation or legal authorization.

(2) In any proceeding under this section with regard to a termination of an institution or location on the ground that by reason of a change of ownership, the institution or location no longer meets the requirements of Secs. 600.5(a)(7), 600.6(a)(6), and 600.7(a)(5) that an institution be in existence for at least two years, the only issues that may be considered are whether—

(i) The institution or location has undergone a change of ownership that results in a change of control within the meaning of Sec. 600.31(c), and

(ii) If such a change has taken place, the requirements of Sec. 600.31(a)(1)-(a)(5) have been satisfied.

(Authority: 20 U.S.C. 1094)

Note: (g)(1) amended October 19, 1992, effective December 3, 1992. Paragraphs (a), (b), (c), (d), and (e) amended March 10, 1993, effective April 28, 1993.

Appendix-Analysis of Comments and Changes

April 15, 1988 Federal Register

Subpart A-General

Section 600.2 Definitions.

Six-month and one-year training programs.

Comment: Approximately 1500 commenters reacted to the proposed regulations which would have defined a "six-month training program" and a "one-year training program" to include a minimum number of calendar days. Most expressed strong objection to the proposed calendar day requirement stating that to require 150 calendar days of instruction for a six-month program and 210 days of instruction for a one-year program would result in the loss of eligibility for many public and private postsecondary institutions. Many expressed the opinion that 150 and 210 calendar days of instruction are not reflective of institutional practices of degree granting postsecondary institutions which operate on a nine- or ten-month academic year.

Hundreds of commenters expressed concern that the proposed definition would eliminate from eligibility all intensive or accelerated programs of instruction. Many felt the proposed requirement was in direct conflict with the philosophy of most proprietary schools, which is to teach the necessary skills to enable a student to obtain a job in the shortest possible amount of time. Others commented that to require a minimum number of calendar days of instruction for a six-month or a one-year program would force an artificial extension of the duration of the program by reducing the number of hours of instruction offered each day; that existing contractual agreements would preclude the immediate lengthening of programs, but in the long term, the proposed minimum number of calendar days would result in an increase in both the time and cost of instruction for both the students and the schools; and that the minimum number of calendar days requirement is discriminatory against clock-hour schools.

Others questioned the Secretary's authority to specify a minimum number of calendar days, expressing the view that these requirements conflict with provisions of section 432 of the General Education Provisions Act, 20 U.S.C. 1232a, which prohibits Federal intervention in the direction, supervision, or control over the curriculum, program of

instruction, administration, or personnel of any educational institution, school, or school system.

Several commenters noted that the proposed definitions were in conflict with the definitions of a six-month training program and a one-year training program in 34 CFR Part 668, the Student Assistance General Provisions regulations.

Response: A change has been made. To consider the wide range of concerns that were expressed by the commenters regarding the proposed definitions of a "one-year training program" and a "six-month training program," the Secretary convened a series of meetings with representatives of the nationally recognized accrediting agencies and associations. One of the items discussed at those meetings was the need to find ways to curtail abuse of the student financial assistance programs through measurement of academic progress management. Toward this end, the Secretary and the nationally recognized accrediting agencies and associations agreed that the accrediting agencies and associations would recommend to the Secretary policies and procedures for the accrediting agencies and associations to adopt to standardize the review and approval of clock hour and credit hour conversions. As discussed in the preamble of these regulations, pending the recommendations from the nationally recognized accrediting agencies and associations, the Secretary has modified the proposed definitions of a "one-year training program" and a "six-month training program" by deleting the minimum calendar day requirement from each definition.

Comment: Hundreds of commenters objected to the provision included in the proposed definitions of a six-month training program and a one-year training program that would require an institution that uses credit hours or units to measure the academic progress of a one-year training program or a six-month training program to be legally authorized by the appropriate State agency to measure those program in credit hours. The commenters noted that the standards of the States vary and that some States neither authorize nor prohibit the use of credit hours; that this requirement would create an undue burden on the States and the institutions; and the ED is encroaching on the role of accreditation. The commenters questioned the Secretary's authority to require an institution to be authorized by the State to measure in credit hours.

Some questioned the need for the Secretary to "ratify" the determination of a nationally recognized accrediting agency's certification of a six-month program, as required by paragraph (c) of the definition of a six-month training program in Sec. 668.2.

Response: A change has been made. The Secretary deleted the requirement that an institution must be specifically legally authorized in the State in which it is located to carry out educational programs in credit hours.

As discussed in the preamble of these regulations, the Secretary has added two new sections under Sec. 600.3, "Special conditions," to clarify ED's policy with regard to the relationship between the institution being legally authorized to provide postsecondary education program in a State and the method that the institution uses to measure academic progress for participation in HEA programs.

Since the six months requirement is a statutory requirement, the Secretary believes it is necessary to ratify an accrediting agency's determination.

Academic year.

Comment: One commenter noted that the terms "academic year" and "first year of the course of study" are not defined in the proposed regulations and expressed the view that part-time adult students would be adversely affected if a year is defined in terms of calendar days rather than equivalent credits taken.

Response: No change has been made. For the purposes of this part, the term "first year of the course of study," as used in Sec. 484(d) of the HEA, refers to the first academic year of a course of study of a regular student whom the institution has admitted on the basis of a determination of the student's ability to benefit from the training offered.

Educational program.

Comment: Several commenters expressed concern that the proposed definition of an educational program limits eligibility to schools providing instruction, while eliminating the eligibility of schools that utilize assessment of external course work and life experience. The commenters stated that non-traditional, innovative institutions provide a much-needed educational function of assessing students' knowledge and skills relative to specific educational programs. They felt that the criterion for determining the institution's eligibility should be linked to whether it is accredited, and that the Secretary's definition of an educational program exceeds congressional intent to the point of being contradictory with the HEA.

Response: A change has been made. The Secretary has modified the proposed regulations by adding the phrase "including a course of independent study" to clarify that the term "instruction," as used in the definition of an "educational program," includes programs of independent study. However, the Secretary believes that it is necessary for an institution or school to provide instruction in order to satisfy the educational program requirement of the statutory definition of an institution of higher education, a proprietary institution of higher education, a postsecondary vocational institution, or a vocational school.

Recognized equivalent of a high school diploma.

Comment: One commenter noted that the definition in the proposed regulations of the "recognized equivalent of a high school diploma" does not address those students who have excelled academically and are admitted to a postsecondary educational institution prior to receiving a high school diploma.

Response: No change has been made. In those limited situations where a postsecondary institution admits a student who has not received a high school diploma, but the student has excelled academically in high school and has met formalized, written admission policies of the institution, the Secretary considers the student as having the equivalent of a high school diploma.

Regular student.

Comment: Several commenters questioned the appropriateness of the definition in the proposed regulations

of a "regular student," expressing the view that a program of study that is in compliance with State and Federal regulations should be the criterion for determining whether a student is eligible for Federal financial assistance. Others expressed the view that an institution should have the right to define a regular student and should be allowed to admit students on a provisional or conditional basis.

A few commenters were of the opinion that the definition of a "regular student" is inordinately broad and could have a negative impact on an institution's statistical base in determining its administrative capability. For instance, an accepted student who was never charged any tuition or fees and who never attended one day of classes would be classified as a "regular student" for the purpose of calculating the institution's ratio of withdrawals under the Student Assistance General Provisions regulations.

Response: No change has been made. The definition of a regular student was initially included in ED regulations in 1979 and has remained basically unchanged since that time. Moreover, it is necessary to define "regular student" in these regulations since an element of each of the statutory definitions of a postsecondary educational institution includes the type of regular student the institution admits. The Student Assistance General Provisions regulations have been revised to remove any distortion that may be caused by the definition of a regular student.

Section 600.3 Special conditions.

Comment: Two commenters requested clarification regarding the location of an institution if the institution offers a program of study by correspondence and has sales offices in numerous locations or has more than one administrative office.

Response: A change has been made. The Secretary has modified the proposed regulations by deleting the reference to the "sales office" under this section. Thus, a correspondence school is considered to be located in the State in which it has its administrative office.

Comment: Two commenters inquired whether a school offering a program of study by correspondence with a residential training component is considered to be located only in the State in which its administrative or sales office is located.

Response: A change has been made. The Secretary has modified the proposed regulations to clarify that if a program of study by correspondence includes a period of residential training, the Secretary considers the institution to be located in both the State in which its administrative office is located and the State in which its residential program is located.

Comment: One commenter inquired if the proposed regulations which require a minimum duration of 90 calendar days in a vocational education program applies to home study programs and also to programs that combine home study with residential training.

Response: A change has been made. The Secretary has modified the definition of vocational school by deleting the requirement that would require a minimum duration of 90 calendar days in a vocational education program.

Section 600.5 Proprietary institution of higher education.

Comment: Two commenters inquired if the following two criteria of the definition in the proposed regulations of a proprietary institution of higher education are inconsistent: Sec. 600.5(a)(4), which requires an institution to be legally authorized to provide an educational program beyond secondary education, and Sec. 600.5(a)(5), which requires the institution to provide at least a six-month training program.

Response: No change has been made. These are two separate, independent requirements contained in the statutory definition of a proprietary institution of higher education and are not inconsistent. Each of these requirements must be met in order to qualify as an eligible proprietary institution of higher education.

Comment: One commenter noted that in recent years many high schools have developed vocational programs of instruction at a level that were previously offered only by postsecondary institutions and suggested that the definition in the propose regulations of a vocational school is not consistent with this practice.

Response: A change has been made. The Secretary agrees and has revised the proposed definition of vocational school by deleting the phrase "more advanced than those generally offered at the high school level."

Comment: Several commenters expressed concern that the proposed regulations would eliminate one or both of the alternatives to accreditation (i.e., State agency approval and advisory committee approval) for public vocational schools that are located in those States in which the Secretary has not recognized a State agency for approval of public postsecondary vocational education. One commenter took exception to the statement in the proposed regulations that no vocational school has sought eligibility under these alternatives to accreditation in the last ten years.

A few commenters noted that the Higher Education Amendments of 1986 did not repeal the alternatives to accreditation for unaccredited vocational schools, and commented that they did not object to the Secretary's plan not to promulgate regulations, provided the regulations are not needed in order for a school to use the alternatives to accreditation for eligibility under this part.

Others expressed the view that accreditation by an agency recognized by the Secretary for that purpose is the appropriate mechanism for assuring the quality of education; therefore, to eliminate the alternative methods of accreditation for eligibility for GSL, SLS and PLUS programs is appropriate.

Response: No change has been made. The Secretary will continue to recognize State agencies, for the purpose of approving public vocational schools as an alternative to accreditation by listing in the Federal Register in accordance with 34 CFR Part 603.

The Secretary will not issue regulations governing the advisory committee alternative to accreditation, as nearly all categories of vocational schools now have access to a nationally recognized accrediting agency or approval by a State agency.

The statement in the proposed regulations that no vocational school has sought eligibility in the past ten years

under these alternatives to accreditation applied only to the advisory committee alternative. In the event a school seeks accreditation in a category for which no appropriate nationally recognized accrediting or State agency is available, the Secretary appoints an advisory committee to prescribe standards and approve schools for a particular category. No regulations are needed for this procedure.

Section 600.8 Transfer-of-credit alternative to accreditation.

Comment: Several commenters objected to requirements in the proposed regulations to increase from three to four the number of students of an unaccredited institution whose credits must be accepted on transfer by each of three accredited institutions. They also objected to requirements that the students must be accepted into programs not specifically designed for them that the students' credits be evaluated and accepted on the same basis as transfer students from accredited institutions, that the students actually enroll and attend the accredited institution, and that the accredited institution have an educational program at least as long as the longest educational program offered at the unaccredited institution.

Two commenters also objected to requirements that an unaccredited institution must: (1) Submit an official publication from each accredited institution stating the policy of the institution regarding acceptance of transfer credits from accredited and unaccredited institutions; (2) obtain and submit enrollment records for each student transferred; and (3) certify that no payments were made to the accredited institution in conjunction with the institution's acceptance of credits of students on transfer from the unaccredited applicant institution.

Response: No change has been made. The Secretary believes that increasing from three to four the number of students or former students of an unaccredited institution that must transfer to each of three accredited institutions will provide further evidence that the accredited institution has based its decision to accept the credits of the unaccredited applicant institution on the quality of the educational program of the unaccredited institution rather than upon the qualifications of a particular student.

In accepting the credits of students on transfer from an unaccredited institution, the accredited institution must apply the same admission policies as it applies in accepting the credits of students on transfer from any accredited institution. Therefore, if it is an accredited institution's standard admission policy to charge a fee to evaluate the credits of students who apply for admissions on transfer from another accredited institution, as stated in the institution's catalogue or other official publication, the Secretary will recognize that policy with regard to the payment of fees for evaluating the credits of students who apply for admission on transfer from an unaccredited institution.

The Secretary is legally authorized to require that an unaccredited institution that is requesting eligibility to participate in HEA programs under the transfer-of-credit alternative demonstrate that it satisfies the transfer-of-credit alternative. Based upon experience, the Secretary has determined that it is the better administrative practice in this area to require the applicant institution to provide all the information and documents necessary for the Secretary to make a determination and that actual documents rather than mere certifications be provided to support that determination.

Section 600.9 Written agreement between an eligible institution and another institution or organization.

Comment: Two commenters objected to the proposed regulations to require an institution itself to be accredited or preaccredited in order to enter into a written agreement with another organization. The commenters stated that the proposed regulations would prohibit some "eligible institutions" that are neither accredited nor preaccredited from entering into a written agreement with another institution or organization to provide a portion of the eligible institution's total educational program. The opinion was expressed that all institutions that are designated as eligible should be entitled to the same benefits.

Response: No change has been made. The Secretary believes it to be inappropriate for an unaccredited institution to retain its eligibility as an eligible institution if it contracts to have a portion of its eligible program provided by another institution.

Section 600.10 Date, extent, duration, and consequences of eligibility.

Date of eligibility.

Comment: Several commenters expressed reservations concerning the proposed rules to establish the effective date of eligibility as of the date on which the Secretary receives all the information necessary to make that eligibility determination. Many expressed concern as to whether ED resources would be available to maintain the procedure.

Most expressed the view that the effective date of eligibility should be the date on which the institution meets the requirements for eligibility as confirmed by the Secretary. Others suggested the following: The date of application unless the Secretary changes the date for good and substantial cause; the date the accrediting agency indicates in its letter of notification to ED that a school has been accredited, a program of study was added or a change of location or ownership occurred; or the postmark date on certified mail so that both the institution and the Secretary would have a clear audit trail. Some stated that the current practice should be maintained.

Others felt the date of eligibility should be modified to state that this eligibility covers all in-school students to the extent of the academic year within that award year.

Response: No change has been made. The Secretary believes the date of eligibility cannot be established before the date on which the institution meets all requirements of the relevant statutory definition. The first date on which the Secretary can be assured that an institution or school has met all of those requirements is the date on which all materials are available to the Secretary to support that determination. The Secretary also believes that an institution should not be penalized by ED delays in processing the application.

Extent of eligibility.

Comment: Many commenters objected to the proposed regulations which would have prohibited extending

an institution's eligibility to any educational program or location that an institution establishes after it receives the eligibility designation. It was stated that the effect of this provision would be to shift authority from the nationally recognized accrediting agencies directly to the Secretary, and that it would delay the eligibility of students attending new courses at extension or location facilities. Some commented that the provision is contrary to the concept of institutional accreditation, and noted that over time ED's procedures for designating eligibility have ranged from issuing blanket letters of eligibility to the current procedure of issuing eligibility letters that are program-of-study specific and require updating as program offerings change. The current procedure was described as burdensome, time-consuming, and confusing for the institutions.

Others expressed the view that if a new program is both accredited and legally authorized by the State in which the institution is located, a determination of program eligibility on a program-by-program basis should not be required.

Several questioned the need for the multiple safeguard efforts, noting that the proposed regulations would require the State, the accrediting agency, and ED to approve curriculum, program, and location changes.

Others expressed a wide range of concerns, including that the proposed provision would, in effect, eliminate institutional accreditation, that the schools will cease to have the capability to respond to the dynamics of the current job market and the needs of the community, that consideration should be given to finding ways to reduce the length of the process as students must already wait a minimum of three months for a school to be eligible to participate in the student financial assistance programs, that implementation of this provision will result in a very significant increase in the number of applications pending before ED without any clearly ascertainable benefit to the Federal interest, that the provision represents an extension of present authority and suggests that ED is moving toward the approval of all educational matters, and that the provision would impose an enormous administrative burden on the staff of ED, as well as result in a significant increase in paper production and complicate the approval process which is not in keeping with the Paperwork Reduction Act of 1980.

Response: A change has been made. The basis for many of the concerns that were expressed by the commenters is not clear. The proposed regulations would have required ED to review each educational program that an eligible institution adds after the institution receives its designation of eligibility. This was consistent with ED's former practice of reviewing individual educational programs for eligibility for participation in HEA student aid programs. However, the Secretary has tried to accommodate some of the concerns by modifying the proposed regulations to eliminate ED's review of individual educational programs that are added by an institution or school after it receives its designation of eligibility.

The Secretary has also modified the regulations by setting forth in Sec. 600.10(c) the responsibility of an institution that has been designated as an eligible institution if it adds educational programs after that designation. The Secretary has further amended Sec. 600.10 by adding a new paragraph (d) to limit an institution's or school's designation of eligibility to a period of four years by requiring that each eligible institution or school renew its eligibility designation, including all its educational programs and all its locations, during its fourth year of eligibility under its most recent eligibility designation.

Comment: One commenter expressed the view that an eligible institution might be required to notify ED when it adds a new or additional location or programs, but questioned the authority of ED to exclude those locations and programs from eligibility whether established before or after institutional eligibility is recognized.

Response: No change has been made. The Secretary extends eligibility to only those locations and educational programs of an institution that are identified in the institution's application and are determined to meet all requirements of this part. An institution's eligibility does not extend to any location that the institution establishes after it receives its eligibility designation. If an institution changes or adds a location, the eligibility status of that location is subject to the requirements of Sec. 600.30 of this part.

Section 600.20 Application procedures.

Comment: One commenter stated that the proposed regulations describing the procedures for applying for institutional eligibility are vague regarding the information and documentation that must be provided to the Secretary. It was suggested that the regulations be more specific concerning the application requirements such as: Include a list of the required documents, or simply require the institution to provide all information necessary to demonstrate that it meets the definition of an eligible institution, as defined in Sec. 600.2, Sec. 600.4, Sec. 600.5, Sec. 600.6, and Sec. 600.7.

Response: No change has been made. The eligibility application to be provided an applicant institution will contain all the specific information needed by the Secretary to determine whether the applicant qualifies as an eligible institution or school.

Section 600.30 Institutional changes requiring review by the Secretary.

Comment: Numerous commenters objected to the proposed regulations which would have required at least 45 days advance notice before the effective date of any change in the information described in Sec. 600.30. These commenters objected to the advance notice requirement on the basis that changes are not always pre-planned, that certain programs (such as externships) may utilize a large and changing number of locations which would significantly increase the institution's paperwork burden, and that an institution is not assured of a change of ownership until the day of the sale, which may or may not be 45 days in advance of the effective date.

Many commenters expressed their concern that the 45 days advance notice requirement would result in unnecessary paperwork since in many cases it may involve a two-step procedure because the anticipated change may never occur. Questions were raised as to what purpose pre-occurrence reporting would serve.

Response: A change has been made. The Secretary has modified the regulations to require that an institution notify ED of the institutional changes described in Sec. 600.30 concurrently with its notifying its appropriate accrediting agency, but no later than ten days after the change occurs.

To notify ED of an institution change that requires review by the Secretary, an institution may simply send to ED a copy of the completed "notice of change" form that the institution uses to notify its accrediting agency of an institutional change.

Section 600.31 Change in ownership resulting in a change of control.

Comment: A few commenters noted that, under Sec. 668.18 of the Student Assistance General Provisions regulations, an institution which is undergoing a change of ownership is required to submit certain financial information, and inquired whether ED will continue to require, for the purpose of establishing or retaining eligibility, a profit and loss statement for the institution's latest complete fiscal year, prepared by a licensed certified public accountant, and any additional financial information which may be required by the Secretary.

Response: A change has been made. The Secretary has modified the regulations to require new owners of an institution to provide a profit and loss statement and a balance sheet, or an audit prepared by a licensed certified public accountant, for the institution's latest complete fiscal year, and any additional information requested by the Secretary.

Comment: One commenter noted that the proposed regulations provide for the retention of all records that are required in connection with an institution's participation in any HEA program, but the regulations do not indicate what records are to be retained nor for what period of time.

Response: A change has been made. The Secretary has modified the regulations to require an institution to maintain, in accordance with section 437 of the General Education Provisions Act, 20 U.S.C. 1232f, all documents that pertain to its application, its notification of institutional eligibility, and its participation agreement for a period of not less than five years.

Comment: A number of commenters requested clarification of the circumstances under which the Secretary considers an institution to be a "new institution" and, as such, subject to the two-years-in-existence requirement. Some inquired if the "new institution" requirement contained in Sec. 600.31(d) applies solely to Sec. 600.31(c) in which a new owner has been convicted of a crime involving an HEA program, or it Sec. 600.31(d) applies to new owners who fail to abide by the requirements of Sec. 600.31(a), or to other situations.

Clarification was also requested as to whether the "new institution" status, under Sec. 600.31(d), applies to both previous owners and new owners who have been convicted of a crime involving any HEA programs. For instance, if a group of investors, one of whom has a relevant conviction, acquires control of an institution, would the institution be considered a "new institution" as a result of the new ownership and, therefore, subject to the two-years-in-existence requirement for the purpose of establishing eligibility? It was suggested that the "new institution" status under Sec. 600.31(d) should not apply to present owners who have been convicted of a crime involving HEA programs.

Response: A change has been made. The Secretary has modified the regulations to provide criteria for determining whether a new owner of an eligible or previously eligible institution or school is subject to the two-years-in-existence requirement as a result of having been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds.

The Secretary may consider an eligible or a previously eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school to be the same institution for the purpose of establishing institutional eligibility under this part, only if the new owner or owners who were convicted of, of pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds are no longer incarcerated for that crime; at least five years have elapsed from the date of the conviction, nolo contendere pleas, guilty plea, or judicial determination; and the funds that were fraudulently obtained or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid.

Section 600.32. Loss of eligibility.

Comment: Several commenters objected to the proposed regulations to permit the Secretary to void an eligibility designation if an institution's eligibility determination was based on inaccurate information, stating that the term "inaccurate information," as used in the proposed regulations, is too vague and general. It was suggested that the regulations be modified to indicate material inaccuracy and that only institutional intention to supply false information should be grounds for loss of eligibility.

Response: No change has been made. An institution that does not satisfy the definition of an eligible institution or school is not an eligible institution or school even though the Secretary may have determined the institution or school as eligible on the basis of inaccurate information. If an institution or school intentionally provided false information, the institution may be subject to legal action.

Comment: Two commenters objected to the proposed regulations to permit a determination regarding the loss of an institution's eligibility without due process of law. Under due process, an institution would be afforded an evidentiary administrative hearing before any action was taken to void its eligibility.

The commenters also objected to the proposed regulations because no provision is included to govern loss-of-eligibility determinations involving unexpected emergency situations, such as fire or natural disaster.

Response: No change has been made. An institution loses its eligibility if and when it no longer satisfies one of the qualifying statutory definitions. An evidentiary administrative hearing is not authorized by the HEA and that type of hearing would not be necessary since the facts with regard to compliance with the statutory definition would not be in doubt.

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Section 600.30 Institutional Changes Requiring Review by the Secretary

Comments: Several commenters asked whether the reporting requirements in this section apply to institutions owned by partnerships as well as institutions in which individuals own stock. A commenter urged the Secretary to ensure that this reporting requirement applies to institutions owned by publicly traded corporations.

Discussion: The reporting requirement in this section applies to any institution that is subject to the Institutional Eligibility regulations, regardless of whether the institution is owned by an individual, partnership, or publicly traded corporation. However, the Secretary agrees that a modification is necessary to clarify that this reporting requirement does not apply only to institutions in which persons own stock.

The Secretary recognizes that persons who do not own stock in an institution may have the ability to affect substantially the actions of the institution. Therefore, the Secretary believes that it is more accurate to refer to holders of an ownership interest in an institution, rather than to owners, and to define an ownership interest. The Secretary also recognizes that certain persons may have the ability to affect substantially the actions of an institution without actually holding an ownership interest in the institution. Institutions must be held accountable for those persons, as well as holders of an ownership interest, if those persons were also responsible for incurring unpaid liabilities of HEA program funds at defunct institutions, as defined in Sec. 668.13. Therefore, an institution must report any change (described below) under which a person acquires the ability to affect substantially the actions of the institution. A more detailed description of the reasons for inclusion of these changes is found in the discussion of the changes made in Sec. 668.13.

The Secretary agrees that another modification is necessary to clarify that an institution owned by a publicly traded corporation must also report any changes under which a person acquires the ability to affect substantially the actions of the institution, even though the executive officers of a publicly traded corporation may not learn of the changes at the time that those changes occur.

Changes: The Secretary has removed the proposed requirement for an institution to report changes in ownership that result in the ownership of at least 25% of the stock of the institution or the institution's parent corporation. Instead, the Secretary has added a requirement that an institution report any change under which a person obtains the ability to affect substantially the actions of the institution. The Secretary has listed those circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. Accordingly, the revised regulations require an institution to report:

(1) Any change under which a person holds at least a 25% ownership interest in the institution, if the person did not previously do so (Sec. 600.30(a)(6)(i));

(2) Any change under which a person and any member or members of his or her family together hold at least a 25% ownership interest in the institution, if they did not previously do so (Sec. 600.30(a)(6)(ii));

(3) Any change under which a person may represent under a voting trust, power of attorney, proxy, or similar agreement others who hold at least a 25% ownership interest in the institution, if the person previously did not have that authority (Sec. 600.30(a)(6) (iii) and (iv)). Note that an institution must report not only the new authority of a person to vote for others, but also the existing authority of that person, at the point at which those represented in the voting authority acquire enough interest to constitute at least a 25% ownership interest in the institution;

(4) Any change under which a person, together with any member or members of his or her family, may vote on behalf of others who hold at least a 25% ownership interest, if the person previously did not have that authority (Sec. 600.30(a)(5)(v)); and

(5) Any change under which a person becomes a member of the board of directors, chief executive officer, or other executive officer of the institution, or of an entity that has at least a 25% ownership interest in the institution (Sec. 600.30(a)(5)(vi)).

The Secretary has added a new paragraph (b), in response to comments on Sec. 668.13, to provide that an institution owned by a publicly traded corporation must report, within ten days of the date that the corporation learns of the change, the applicable change in a person's ability to affect substantially the actions of the institution.

The Secretary has also added a new paragraph (e) to define ownership interest. An "ownership interest" is a share of the legal or beneficial ownership or control of an institution or institution's parent corporation or a right to share in the proceeds of the operation of the institution or institution's parent corporation. The term includes (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust.

The Secretary has excluded from that definition any share or right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded; (2) an institutional investor; or (3) a profit-sharing plan, provided that all employees are covered by the plan.

Finally, the Secretary has added a new paragraph (f) to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter contended that these requirements should not apply to public stock corporations regulated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 and the Securities and Exchange Act of 1934, because such corporations already provide to the SEC the information required by this section. Another commenter suggested that as an additional safeguard, each institution should be required annually to furnish the Secretary with a list of the institution's owners. A commenter requested the Secretary to clarify whether this reporting requirement is triggered by the acquisition of at least 25% ownership or the acquisition of any percentage of ownership, however small, that results in at least 25% of the ownership. Another commenter asked for clarification on whether an institution that undergoes this type of ownership

change is subject to the same procedures as those required for an institution that undergoes a change in ownership that results in a change of control.

Discussion: The SEC requires owners of stock in public corporations to report acquisitions of stock but does not require the reporting of other acquisitions of ownership interest that enable a person to affect substantially the actions of an institution. An annual reporting requirement would be too burdensome for institutions, especially in view of the relatively few institutions whose abuses have prompted the adoption of these provisions. Any increase in a person's ownership interest that results in a person's holding at least a 25% ownership interest in an institution must be reported under this requirement. For example, if a person owns 24% of an institution and acquires an additional 1% of the institution, thus totalling 25%, the institution must report that change to the Secretary. However, unless that change also results in a change of control, the change does not cause the institution to be regarded as a new institution under Sec. 600.31.

Under the Department's current policy, with respect to the ownership of stock or interest in an institution or the institution's parent corporation, the acquisition of any stock or interest that results in the ownership of a controlling interest constitutes a change in ownership that results in a change of control. The institution must report that change under Sec. 600.30(a)(4). Under the provisions of parts 600 and 668, the institution is considered a new institution unless the institution: (1) Submits an application for confirmation of the institution's eligibility under the new ownership; (2) meets the applicable requirements of Sec. 600.31 and all other applicable requirements of part 600; and (3), with regard to the institution's participation in the title IV, HEA programs, reapplies for certification, demonstrates again the institution's financial responsibility and administrative capability, and enters into a new participation agreement with the Secretary.

However, as noted in the preamble to the NPRM (52 FR 11355), there are circumstances under which the Secretary considers a person to have the ability to affect substantially the actions of an institution even when that person does not have a controlling interest in that institution or the institution's parent corporation. A person's ability to affect substantially the actions of an institution is one factor in the Secretary's determination of whether an institution satisfies the factors of financial responsibility contained in Sec. 668.13. In particular, the Secretary does not consider an institution to be financially responsible if a person who was previously associated with a defunct institution that owes a liability on title IV, HEA program funds or refunds of institutional charges to students (1) Acquires the ability to affect substantially the actions of the institution and (2) otherwise meets the conditions of Sec. 668.13. Therefore, any change in a person's relationship with an institution that enables the person to have the ability to affect substantially the actions of the institution must be reported to the Secretary so that the Secretary may evaluate whether circumstances exist that would cause an institution not to be considered financially responsible.

The following example illustrates an institution's responsibilities under the new reporting requirements in this section and how the reported information will affect the institution's eligibility for and participation in HEA programs. A stockholder owns 22% of the stock of a proprietary institution of higher education. The stockholder purchases an additional 4% of the stock of the institution and now owns 26% of the stock. Within ten days of that purchase, the institution must notify the Division of Eligibility and Certification (DEC), preferably in writing, of the purchase. DEC furnishes the institution with a new application for eligibility (ED Form E40-34P). However, assuming that the stock purchase did not result in a change of control of the institution, the institution need not complete the entire application nor reapply for eligibility. The change at this point has not affected the institution's eligibility for participation in any HEA program.

In addition to the general data in Part I and the certification in Item 31, the institution completes only Item 11, providing the name of each stockholder that owns at least 5% of the stock of the institution. The institution must also report which stockholder purchased the 4% of stock that resulted in the ownership of 26%. The institution returns the application to DEC. Until the institution is informed otherwise, it may assume that the purchase has had no impact either on the institution's eligibility or on the institution's participation in any HEA program.

DEC compares the information reported by the institution with information available to the Department on defunct institutions. The Department reviews its records to identify, for example, whether the stockholder or any member of the stockholder's family had the ability to affect substantially the actions of a defunct institution and whether the stockholder, family member, or defunct institution owes a liability on title IV, HEA program funds or refunds of institutional charges to students. If the Department's records do not contain information that might call into question the institution's financial responsibility for purposes of participation in the title IV, HEA programs, DEC notifies the institution that no further action is necessary

If, however, the Department's records show that the institution might not be considered financially responsible under the new provisions in Sec. 668.13, DEC requests further information from the institution and notifies the institution that the institution may be subject to a fine, or the limitation, suspension, or termination of the institution's participation in the title IV, HEA programs.

Changes: None.

Comments: Two commenters requested clarification on the effective date of any determination that an institution is not financially responsible under Sec. 668.13 as a result of the information provided under this section (Sec. 600.30). They were particularly concerned that the Secretary might suspend the participation of the institution in the title IV, HEA programs beginning with the date that the Secretary receives the information under this section.

Discussion: As noted in the preceding discussion, the mere reporting of the information required under this section does not affect an institution's participation in any HEA program. If an institution participates in a title IV, HEA program, and the information reported under this section leads the Secretary to determine that an institution is not financially responsible under Sec. 668.13, that determination is grounds for a fine, limitation, suspension, or termination proceeding under subpart G of the Student Assistance General Provisions regulations; subpart G also contains procedures for institutions to appeal decisions of an administrative law judge.

Changes: None.

Section 600.32 Eligibility of Additional Locations

Comments: Several commenters supported the addition of this section. A few commenters expressed concern that the provisions governing the acquisition of a closed institution that owes a liability on improperly expended or unspent HEA funds would discourage the practice of "teaching out" or would otherwise have an adverse impact on students or potential students at the acquired site. A few other commenters claimed that it is unfair to require the acquiring institution in such situations to assume the liabilities of the previous owner. Another commenter recommended that in situations subject to the provisions of this section, liabilities incurred under the previous owner should remain the responsibility of the closed institution unless the acquiring institution agrees to be responsible for those liabilities jointly with the closed institution.

Discussion: A "teach out" is the completion by another institution of an educational program offered, but not completed, by an institution that closes. Students who are being taught-out may receive title IV, HEA program funds only if the institution providing a teach-out has in place eligible programs suitable for completing the education of students of a closed institution and offers those programs at a properly accredited and licensed eligible location. Because those requirements are normally burdensome and time consuming, most institutions that teach-out students do so with the full knowledge that title IV, HEA program funds are usually not available to those students. Thus, the fact that an acquired site might not qualify for eligibility under the provisions of this section for two years will have virtually no impact on the ability of the acquiring institution to provide teach-out services.

The Secretary recognizes that delaying the eligibility of a location affected by these provisions may have some adverse impact on prospective students who might otherwise consider enrolling at that location if title IV, HEA program assistance were available there. However, the Secretary believes that this potential adverse impact is outweighed by the need to address serious abuses of the type described in the preamble to the NPRM (54 FR 11354) that have involved the misuse of tens of millions of dollars of HEA program funds.

The Secretary does not agree with those commenters who contend that it is unfair for an institution to be required to assume the liabilities of a closed institution in order to acquire the closed institution and establish its immediate eligibility as an additional location. Under Sec. 600.31, the purchaser of an eligible or previously eligible institution is required to assume sole responsibility, or joint responsibility with the previous owner, for all liabilities resulting from the improper administration of HEA program funds at the institution in order for that institution to continue to qualify for eligibility. However, as explained in detail in the preamble to the NPRM, if that purchaser already owns another eligible institution, he or she can avoid assuming responsibility for the liabilities by converting the newly acquired institution into an additional location of the currently eligible institution. Therefore, the Secretary is merely applying to individual locations essentially the same rules that, under Sec. 600.31, he applies to institutions. In addition, under Sec. 600.31, the new owner of an institution must also agree to be liable for refunds of institutional charges to students. The Secretary recognizes the need to revise the proposed regulations to be consistent with the requirements of Sec. 600.31 and to clarify that an institution's liabilities under the HEA programs are not limited to misspent or unspent HEA funds, but encompass any liabilities for refunds of institutional charges to students.

Furthermore, a responsible purchaser should be well aware of the liabilities of an institution before acquiring that institution and take those liabilities into account in agreeing on the terms of the purchase. The Secretary has consistently advised those interested in acquiring an institution to ascertain the financial condition of that institution through such measures as obtaining an audit of the institution's administration of HEA programs and contacting appropriate officials of the Department of Education and guarantee agencies for information on whether the institution owes any liabilities resulting from program or audit reviews.

The last recommendation virtually restates the existing situation-a situation that led to the abuses described in the NPRM and that these regulations are designed to correct.

Changes: The Secretary has revised paragraph (c)(3)(i) and added paragraph (d)(2) to include references to liabilities owed for refunds of institutional charges. The Secretary has added a similar reference to Sec. 668.13(c)(5)(iii)(A).

Comments: A number of commenters recommended that the Secretary take additional steps to prevent unscrupulous owners from escaping responsibility for the liabilities incurred at those owners' institutions. A commenter suggested that the Secretary require an institution to post a performance bond against liabilities incurred in the event that the institution closes. Other commenters suggested that the Secretary should simply require all liabilities owed by a closed institution on HEA program funds to be settled before that institution may qualify as an eligible additional location, without permitting the alternative of a two-year delay in eligibility. Another commenter suggested that the Secretary apply the requirements of Sec. 600.32(c) to situations involving the acquisition of an institution that has not closed but that owes a liability on the misuse of HEA program funds.

One commenter suggested that the Secretary assign a separate vendor code number for each eligible location of an institution to facilitate the monitoring of HEA program funds used at each location. Another commenter recommended that the Secretary establish a two-year probationary period for those locations that may become eligible without being in existence for two years. During that period, the Secretary would monitor the use of HEA funds at those locations through the review of regularly submitted reports and other information. Another commenter suggested that the Secretary conduct a title IV, HEA program review at each institution that closes or is sold and require each institution to disclose all HEA program fund liabilities and the results of audit and program reviews in the event that an individual or organization contemplates the purchase of the institution.

Discussion: Many of these suggestions are well-taken, but none of them requires the Secretary to modify the proposed regulations. The Secretary currently requires both fidelity bonds and, where financial responsibility is not clearly demonstrated, performance bonds, to guard against liabilities incurred in the event that institutions close (see 34 CFR 668.13(d) and (g)). The alternative of the two-year delay in

eligibility has served as an effective incentive for new owners to assume responsibility for the liabilities owed by previous owners in situations involving changes in ownership that result in a change of control. The Secretary expects that alternative to be an equally effective incentive for an acquiring institution to assume responsibility for liabilities in the parallel circumstances governed by these new regulations.

In most instances in which an eligible institution acquires another eligible institution that is still open, the acquired institution undergoes a change of ownership that results in a change of control. Therefore, in most cases the owner of the acquiring institution must, under the provisions of Sec. 600.31, assume responsibility either alone or jointly with the owner of the other institution for the liabilities owed by the acquired institution. If that assumption of liability does not occur, the acquired institution remains ineligible for at least two years. In the few instances in which the acquisition does not involve a change in ownership that results in a change of control, the requirements of Sec. 600.32(c) do not apply. However, the Secretary is continuing to examine all of the Department's policies concerning the acquisition by eligible institutions of additional locations and may propose further regulations governing the acquisition of open institutions as part of the contemplated NPRM mentioned at the end of this discussion.

With regard to the suggestion concerning the assignment of a separate Office of Postsecondary Education identification number (OPE ID number-formerly called the vendor code number) to each eligible location of an institution, the Secretary is examining methods, other than regulatory approaches, for identifying and monitoring the use of HEA program funds at individual eligible locations. While the Secretary does not now have a formal requirement for a two-year probationary period for newly eligible additional locations, the Secretary may at any time request information from an institution concerning the administration of HEA program funds at any of the institution's locations. In addition, the Secretary has established new safeguards to control the availability of HEA program funds at additional locations through such measures as a requirement for the reexamination of an institution's administrative capability and financial responsibility each time that the institution applies for eligibility for a new location.

The Secretary already requires an institution that closes or loses eligibility to arrange for an audit report of all title IV, HEA program funds that the institution has received (see 34 CFR 668.25). The Secretary may conduct a program review at any institution that changes ownership resulting in a change of control. A person interested in purchasing all or part of an eligible or previously eligible institution may obtain from the Department of Education information on any HEA-program-related liabilities owed by that institution or the results of audits or program reviews of that institution.

These regulations essentially restate the Department's current policy that to be included in an institution's eligibility, an additional location need not be in existence for two years. In light of the serious abuses connected with the practices of some closed institutions that contrive to become eligible additional locations of participating institutions while avoiding responsibility for liabilities incurred at those closed institutions, the Secretary considers it critical to revise his current policy to require such an additional location to wait two years to qualify for eligibility, unless the acquiring institution assumes the liabilities incurred at the closed institution. However, the Secretary is concerned over other serious abuses that can be related directly to the general policy exempting additional locations from the two-year rule. Therefore, while the Secretary considers these regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current policy of generally exempting additional locations from the two-year rule and soon intends to publish an NPRM to request public comment on proposals to place strict limitations on that exemption.

Changes: None.

Comments: Several commenters objected to the concept in Sec. 600.32(c) that to qualify an acquired location of a closed institution for immediate eligibility, an acquiring institution must be responsible for liabilities of the closed institution even if the assets of the closed institution were acquired indirectly. Specifically, these commenters recommended that the two-year delay in eligibility not be applied to indirect acquisitions of assets of the closed institution. They also identified the criteria that they consider to constitute a direct acquisition, and they described the steps that an institution should take to ensure the responsible administration of student aid funds at a directly acquired location. They suggested that direct acquisitions by institutions that take those steps be exempt from the two-year delay. According to these suggestions, a direct acquisition would occur only if any transfer of assets is through a contractual relationship between the buyer and the seller, actual money or other consideration is paid by the buyer to the seller, and the assets are not obtained through a third party. The steps that an institution would take to exempt that acquisition from the two-year delay would include an arrangement for the buyer to teach out the seller's students and a requirement that the buyer provide at the acquired location generally the same educational program as the one provided by the seller at that location.

Discussion: The Secretary does not agree with these commenters. These regulations are intended to prevent situations in which a buyer can acquire the assets of a closed institution, either directly or indirectly, without assuming responsibility for the institution's liabilities and still qualify that institution for immediate eligibility. The commenters recommend establishing criteria that would permit a continuation of the current practice through which owners of closed institutions too easily attempt to escape responsibility for liabilities at those institutions, and buyers of those institutions also avoid that responsibility. For example, under the commenters' suggested criteria, a seller could avoid a direct acquisition by refusing to enter into a contractual relationship with a buyer, arranging for the transfer of assets through a third party, and arranging that no money be given directly by the buyer to the seller. The buyer could then acquire the additional site, under the commenters' suggested criteria, without accepting responsibility for the seller's liabilities and without waiting two years for the new acquisition to qualify for eligibility.

The Secretary is convinced, however, that a modification is necessary to clarify that even if an acquired institution did not own the facility in which the institution was located, the provisions of this section must be satisfied before the institution may qualify for eligibility as a component of another institution.

Changes: The reference in paragraph (c)(3) is changed from an institution that previously owned a location

to an institution from which the applicant institution acquired the assets of a location.

Comments: One commenter, concluding that the provisions in Sec. 600.32(c) are aimed at proprietary institutions, urged the Secretary to clarify that these provisions would not be used to inhibit the ability of public institutions to develop additional locations to serve widespread populations.

Discussion: While it is true that the acquisitions that are the subject of these regulations are most common among proprietary institutions, public institutions are also affected. A public institution that meets the definition of a postsecondary vocational institution or a vocational school, as those terms are defined in the HEA and these regulations, is required to be in existence for at least two years. Thus, if a public institution were to acquire a closed institution and request eligibility for that location, the public institution would have to satisfy the requirements of this section. While these provisions may inhibit some institutions, whether they are public, private nonprofit, or proprietary, from acquiring certain institutions with substantial HEA program liabilities, these provisions do not prevent an institution from undertaking most types of expansion to serve the needs of its population. The Secretary believes that these provisions are necessary as a means of preventing a particular abuse under which some institutions that have mismanaged HEA program funds avoid repaying liabilities for those funds and contrive to continue to participate in HEA programs as additional locations of, and with the full knowledge of the owners of, other institutions. Any institution seeking to acquire a closed institution with the intention of qualifying that location for eligibility need only exercise the ordinary responsible precautions of ascertaining the financial condition of the closed institution and whether the closed institution owes liabilities related to the administration of the HEA programs. In those instances where such a closed institution owes liabilities,the acquiring institution may either accept responsibility for those liabilities or defer eligibility for two years.

Changes: None.

December 3, 1992 Federal Register

In response to the Secretary's invitation in the NPRM, 149 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes are not addressed.

Application of the Two-year Rule to Additional Locations of Proprietary Institutions, Postsecondary Vocational Institutions, and Vocational Schools, and to Additional Locations That Seek Conversion to Freestanding, Independently Eligible Institutions (Sections 600.5 and 600.6 and proposed §§600.7 and 600.12)

Comments: Many commenters acknowledged that in the past there have been abuses of the institutional eligibility regulations and the student financial aid programs that related to institutional expansion. While acknowledging the need to address the remaining problems, some of these commenters identified problems with the proposed changes. Two commenters said that the examples cited in the NPRM did not fairly represent usual circumstances of expansion. A number of commenters contended that the proposed regulations were too harsh for the problems described in the NPRM. The proposed regulations, they claimed, would prohibit expansion as, realistically, schools today cannot expand without access to title IV, HEA program aid. Some commenters expressed concern that the proposed regulations were too broad and would penalize a great many schools for the irresponsibility of a few.

Other commenters explained that implementation of the regulations would result in unintended consequences or undesirable side effects. Among the problems cited were that the regulations would affect adversely those students who are most in need of education or training yet who are the least mobile and the least able to afford the training. One commenter said that if the proposed regulations were implemented, proprietary schools would be discouraged from taking the financial risk necessary to meet the needs of underserved populations; under current regulations, schools can expand to locations that are convenient to students and they can offer financial support to those students who need it. Several commenters said that the ability of the affected schools to expand to meet specific community needs—in particular the need for specific skills and the need for re-training—would be eliminated; others pointed out that, unless Federal aid is available for that training, unemployed workers are unlikely to have the personal financial resources required to attend a postsecondary institution. Many commenters noted that the proposed regulations would deny local communities the ability to encourage development of new locations by institutions capable of educating citizens for prospective employment in new industry attracted to their geographic areas. Two commenters expressed concern that the proposed broad references to locations would apply to facilities with no capability to achieve freestanding status.

Three commenters claimed that other Federal agencies, such as the Federal Aviation Administration and the Department of Labor, have an interest in and monitor the expansion of programs under their jurisdiction, yet ED proposes to limit expansion of some of those same programs.

A number of commenters addressed the specific issue of converting an additional location to a freestanding, independently eligible institution. Many commenters supported the proposed changes in the treatment of conversions, including some who opposed the application of the two-year rule to additional locations. Other commenters suggested modifications to the proposed changes affecting conversions.

A few commenters recommended that a branch not be permitted to convert to a freestanding institution unless it had been a branch for at least five years. Other commenters suggested not applying the two-year rule to conversions but, rather, prohibiting the sale of a newly converted institution for a set period of time. One commenter recommended permanent prohibition of conversions to solve the "lease-purchase" problem described in the NPRM on pages 63574 and 63575. Several other commenters believed that the lease-purchase type of abuse was never a large problem and is not a problem now.

Of those opposed to imposing limits on conversions, two commenters expressed concern that students attending

an institution that becomes freestanding would lose financial aid because of a technical change in status in the institution; this might then force the students to discontinue their education. One commenter characterized the conversion of locations to freestanding institutions as a prudent business practice, inasmuch as a parent school is vulnerable to the actions of a branch. Other commenters expressed concern that the application of the two-year rule to conversions would prohibit the sale of institutions. One commenter predicted ED would see more institutions fail if the proposed regulations were implemented because school owners who needed to sell schools or parts of schools would not be able to find buyers. Another commenter was worried because he needs to sell his main school and its two branches due to his age and a recent illness; he reasoned that under the proposed regulations, he would need to sell the three schools to one person, which would be almost impossible.

Two commenters questioned whether the application of the two-year rule would deter abuse, as an institution could operate on an exceedingly small scale for two years, then expand rapidly.

The majority of the commenters who believed there are problems to be solved, but that the proposed solutions were overly broad or inappropriate, offered alternatives to the approach proposed in the NPRM. As noted previously, some commenters recommended applying the two-year rule to additional locations of institutions that already are eligible. Several commenters recommended that additional locations be granted provisional approval. Others suggested that limits be placed on additional locations, such as:

(1) The main school may have only one branch at a time;

(2) The main school may submit only one application for an additional location per year;

(3) An additional location may offer only courses that are offered at the main school;

(4) An additional location must be within the same State or within a certain distance of the main school;

(5) An additional location may receive only a certain percentage of the financial aid funds available to the institution as a whole; and

(6) An additional location's receipt of title IV, HEA funds may not exceed a certain percentage of total revenues, or only a certain percentage of students may receive title IV, HEA program aid.

A few commenters recommended expanding the list of exceptions in §600.12 to include regionally accredited, degree-granting institutions, and institutions and additional locations that have been in existence for at least five years. Several commenters recommended that accrediting agencies be required to tighten approval or monitoring procedures. Ten commenters suggested that State licensing authorities should require a test to determine the need for the additional location in their State. One commenter believed branches should be allowed if the main institution can demonstrate need for them.

Some commenters stated that institutions should be treated on a case-by-case basis. Others advocated applying the two-year rule to additional locations and to new freestanding institutions, as proposed in the NPRM, unless the main institution has a good track record with ED, as demonstrated by meeting certain criteria. Recommendations for these criteria included:

(1) A cohort default rate below 20 percent;

(2) Timely submission of all fiscal operations and audit reports;

(3) No significant liabilities owed on misspent title IV, HEA program funds as determined on the basis of an audit or program review;

(4) No administrative action taken against the institution;

(5) No change of ownership within the past year;

(6) No complaints on file against the institution;

(7) Superior financial stability, perhaps demonstrated by a higher current ratio of assets to liabilities than that required by current regulations (for example, 1.5:1 or 2:1);

(8) High placement rate;

(9) Participation in title IV, HEA programs by the institution for at least five years; and

(10) Any other requirements specified by the Secretary.

A number of commenters asserted that the problems cited in the NPRM were due, in part, to the failure of ED to screen and monitor institutions. Some of these commenters asserted that the existing regulations are sufficient and that the solution to the problems lies with improved enforcement of the existing regulations. They urged ED to be more rigorous in its eligibility and certification process, including requiring institutions to document their claims and conducting pre-certification site visits. Many commenters claimed that although problems with branching and conversions to freestanding status existed at one time, they have been solved, to a great extent, as the result of recent strengthening of oversight activities by accrediting agencies, State licensing agencies, and ED. One commenter characterized branches being started today as well-thought out, well-financed, well managed, and needed in their communities.

Most of the commenters who believed the problems have been solved pointed to recently strengthened requirements of accrediting agencies that: (1) limit the numbers of additional locations attached to any main campus; (2) require a minimum period of operation for an additional location before another location may be opened; (3) require the educational programs offered at an additional location to be identical to programs offered at the main campus; (4) require monitoring and on-site evaluations of the operations of an additional location by the accrediting agency for a period of one to two years after the additional locations is established; and (5) prohibit management or option agreements that would affect a branch's future management. Some of the commenters suggested that the Secretary impose specific requirements on accrediting agencies to provide stricter monitoring of additional locations.

Some commenters noted that in August 1990, ED adopted procedures to review the administrative capability and financial responsibility of the institution as a whole when the institution seeks approval for an additional location. This step was viewed by these commenters as negating the need for additional regulations governing additional locations. Several other commenters believed that the few "bad" schools are no longer in business.

Discussion: The Secretary notes that comments were thoughtful and well-reasoned and that many of the commenters who voiced objections to the NPRM provided constructive suggestions on ways the proposed regulations might be modified. The Secretary appreciated particularly the comments of those individuals who acknowledged the problems and then proceeded to offer tailored solutions. The Secretary does not agree with commenters who said that all the problems identified in the NPRM have been solved or that current regulations are sufficient.

The HEA, as amended by the Higher Education Amendments of 1992, Public Law 102-325, specifically addresses the issue of branch campuses *vis-a-vis* the two-year rule, and many of the suggestions made by the commenters are included in the new subpart H of title IV of the HEA, entitled "Program Integrity Triad." Therefore, the Secretary is withdrawing his proposal to apply the two-year rule to additional locations established by eligible institutions.

However, the Secretary believes that immediate application of the two-year rule in cases of additional locations that become independent institutions is needed. For a freestanding institution, improved assessment and monitoring procedures, including on-site reviews prior to certification, while useful, cannot provide adequate assurance that the new institution is financially stable and administratively sound. Whereas a main institution and its additional locations are linked and the main institution's history of operations is relevant to the operation of the additional location, the financial and administrative "track record" the new freestanding institution presents is not its own, but rather that of another entity. Therefore, the Secretary believes a location of an eligible institution that becomes a freestanding, independent institution must operate independently of its former parent institution and establish its viability as a separate entity for at least two years before it may qualify as an eligible proprietary institution or postsecondary vocational institution. However, the exception in the proposed regulations with regard to a postsecondary vocational institution that qualifies also as an institution of higher education is retained in the final regulations. For a discussion of this provision, see page 63575 of the notice of proposed rulemaking.

Changes: Section 600.12 of the NPRM is withdrawn from these final regulations.

Comment: None.

Discussion: The HEA, as amended by the Higher Education Amendments of 1992, Public Law 102-325, eliminated vocational schools as eligible institutions under the Federal Family Educational Loan Program (formerly the Guaranteed Student Loan Programs), and also deleted the term "vocational school." Therefore, the proposed amendments to the definition of the term "vocational school" in the Institutional Eligibility regulations, §600.7(b)(2) and (d), are unnecessary. Comprehensive changes to the Institutional Eligibility and Student Assistance General Provisions regulations—to delete the definition of vocational school and references to vocational schools and to make other revisions necessitated by the Higher Education Amendments of 1992—will be made in other regulations.

Changes: Paragraphs (b)(2) and (d) of §600.7 are withdrawn from these final regulations.

Comment: A dozen commenters supported the proposed changes. Some of these commenters recommended that the two-year rule be applied in other situations as well: Two commenters recommended that the two-year rule apply to all additional locations, not just to those offering at least 50 percent of an instructional program, and two commenters recommended that the two-year rule also apply to institutions that change ownership.

Discussion: The Secretary acknowledges the suggestions submitted by these commenters. However, as noted above, many of the issues related to additional locations of an institution, including the treatment of branch campuses, must be decided through the rulemaking process as the Secretary proceeds to publish regulations to implement statutory provisions added to the HEA by the Higher Education Amendments of 1992, Public Law 102-325. Comments regarding the application of the two-year rule to changes in ownership are addressed below in the section entitled "Changes of Ownership."

Changes: None.

Comment: One commenter sought clarification regarding the two-year rule for new community colleges. The commenter noted that it appeared a new community college would be able to qualify almost immediately as an institution of higher education. However, the commenter had concluded that the same institution would be required to be in existence for two years before being eligible to meet the definition of a postsecondary vocational institution. Thus, only after two years would students enrolled in vocational programs of less than one year be allowed to participate in title IV, HEA programs. The commenter asked if his understanding of the situation is correct.

Discussion: The commenter is correct. If a student enrolls in a new community college in a program of at least one year in length, that student would be eligible to receive title IV, HEA program funds. However, if that student enrolls in a new community college in a program of less than one year in length, that student would be ineligible to receive title IV, HEA program funds. The new community college would have to offer a program of less than one year for two years before a student enrolled in that program would be eligible to receive title IV, HEA program funds.

Changes: None.

Bias Against Proprietary Institutions and Students Alleged

Comments: Many commenters charged that the proposed regulations would discriminate against proprietary institutions and students. Some of these commenters believed that the proposed regulations would provide an unfair competitive advantage to public institutions. One commenter was concerned about the implication that institutions of higher education are somehow more administratively capable and financially responsible. Another commenter contended that

the proposed regulations were based on outdated statutory definitions. A number of commenters believed it unfair to limit an institution's operation solely on the basis of whether the institution is organized as a public, private non-profit, or private for-profit institution. Some of the commenters were concerned because they believed the proposed regulations discriminated against all non-degree vocational schools.

Other commenters asserted that those who would be hurt the most would be students who could not afford to pay cash; some claimed that the proposed regulations would place an unrealistic burden on students. A number of commenters expressed concern that students enrolled in similar programs at different types of institutions would be treated differently and that some students enrolled in degree-granting programs would be penalized for no reason other than the tax-paying status of the institution. Some of the these commenters recommended that all degree-granting institutions be recognized as institutions of higher education. A few commenters took exception to the comment in the NPRM preamble on page 63574 that problems of uncontrolled growth were found particularly in the proprietary sector; three commenters pointed out that there are equally egregious examples of uncontrolled expansions involving non-profit institutions that have misused title IV, HEA program funds that would not be covered by the proposed regulations.

A number of commenters believed that the proposed changes exceeded the Secretary's authority. Some commenters questioned what they perceived as ED's proposal to treat "institutions" and "locations" as synonymous terms, when they are not. Others contended that the NPRM contradicted the intentions of Congress as expressed in the HEA. Several commenters characterized the proposed regulations as restraining trade and free enterprise and stifling growth.

Discussion: The Secretary does not agree with those commenters who contend the proposed regulations are discriminatory because of the types of institutions and students they would affect. The changes proposed in the regulations were designed to address the application of the two-year rule. The two-year rule is an element in the statutory definitions of a proprietary institution and a postsecondary vocational institution. The two-year rule is not an element in the statutory definitions of an institution of higher education; therefore, by definition, the two-year rule does not apply to an institution of higher education.

This does not mean, however, that the Secretary is unconcerned about abuses committed by institutions of higher education to which some of the commenters alluded. In the instances referred to, there was no uncontrolled expansion resulting from adding accredited, eligible subordinate locations to eligible institutions. In those cases, the regulations that were abused were ones that allow an institution to enter into a written agreement with an ineligible institution for the ineligible institution to provide a part of the educational program to students enrolled in the eligible institution. (34 CFR 600.9). Therefore, while the Secretary considers these final regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current regulations governing written agreements and might publish an NPRM to request public comment on proposals to tighten those regulations.

Changes: None.

Timing of Notice of Changes Questioned

Comments: A number of commenters noted that the proposal is badly timed because the HEA is being amended and reauthorized, and provisions in the House and Senate reauthorization bills, either directly or through strengthening of the State approval, eligibility and certification processes, address the issue of branch campuses. These commenters recommended that ED wait for congressional action before embarking on the regulatory process. One commenter added that promulgation of final regulations now would be neither an appropriate use of scarce resources nor an effective exercise of ED's regulatory authority.

Discussion: The Secretary notes that while additional authority to address abuses has been granted through reauthorization of the HEA, application of the two-year rule in cases of additional locations that become independent institutions is needed now.

Changes: None.

Comments: Two commenters believed the issues surrounding the abuse of the two-year rule should be studied further before regulations are finalized. One of these commenters recommended that ED representatives meet with representatives of higher education associations to determine the current scope of the problems and the best ways of dealing with the problems. The other commenter suggested issuing a new NPRM requesting comments and suggestions on criteria by which the Secretary may grant a waiver.

Discussion: Prior to and after publishing the NPRM, ED representatives had discussions with representatives of the higher education community. Further, in response to the request for comments on the NPRM, several accrediting associations provided information on the steps they have taken to limit institutional branching and to strengthen their approval processes. ED reviewed the data these associations provided on the number of branches currently approved, the number of branch campus applications in process, and the number of applications in process, and the number of applications processed in previous years, prior to changes in branch campus approval procedures. He has determined that the regulations should be amended at this time to apply to additional locations seeking to become freestanding, independently eligible institutions. However, as ED proceeds to develop regulations to implement the amended HEA, the Secretary will entertain further discussion regarding treatment of additional locations.

The Secretary received numerous suggestions for criteria to use in waiving the two-year rule. However, the Secretary was unable to adopt such an approach because he has no statutory authority to waive the two-year rule.

Changes: None.

Comments: Several commenters said that there are many unemployed and dislocated workers who need retraining and that failure to recognize these needs of the workforce will significantly affect our country's competitive stature. Thus, this is not a good time to limit expansion of training opportunities. One commenter noted that some community colleges cannot continue to offer open enrollment due to tight State budgets while, at the same time, because of the economy, there is increased demand by students for more and better training. The commenter concluded that

expansion of community colleges is not the option it once might have been. With that avenue of expansion closed or closing, the commenter suggested that it is also important not to preclude the expansion of other types of institutions that can meet these needs.

Discussion: The Secretary agrees with the commenters that unemployed and dislocated workers need access to retraining and other educational opportunities. Therefore, the Secretary modified the proposed regulations to apply the two-year rule only to additional locations seeking to become freestanding, independently eligible institutions.

Changes: As indicated above, §600.12 of the NPRM is withdrawn from these final regulations.

Comment: One commenter asked the Secretary to consider whether appropriate time was provided for public comment on the NPRM, inasmuch as the NPRM, which was published on December 4, 1991, was not received by some institutions until January 1992. This shortened the normal comment period.

Discussion: The **Federal Register** is available throughout the nation within a day or two of publication. Moreover, the Secretary received a large number of comments by the close of the official public comment period so it appears that there was sufficient time for comment.

Changes: None.

Relocation of Existing Institutions

Comments: Several commenters requested clarification of the applicability of the two-year rule to a school that relocates temporarily or permanently.

Discussion: So long as the purported relocation of an eligible institution does not result in the establishment of an additional institution, the Secretary would treat the relocation as a change of address. The Secretary makes a distinction between the establishment of a new institution and a change of location for an existing, eligible institution.

Changes: None.

Effect of Proposed Regulations on Applications in Process

Comments: Seven commenters addressed the question of the date when these final regulations will become effective and the effect this will have on activities that had been initiated, but not completed, before the regulations go into effect. They suggested that any change in the regulations be put in place in such a way that institutions in the process of changing status would not be penalized.

Discussion: As indicated in the EFFECTIVE DATE section of this preamble, unless Congress takes certain adjournments, these regulations will go into effect 45 days after they are published in the **Federal Register**. As a result, eligibility applications for new, freestanding institutions will be evaluated on the basis of the regulations in effect on the date the applicant institution submitted all required application information.

Changes of Ownership (Sections 600.5(b)(2), 600.6(b)(2), and 600.31 and Proposed §600.7(b)(2))

Comments: Some commenters, noting the phrase "the Secretary does not count any period during which the applicant institution was part of another eligible proprietary institution * * *," questioned whether the two-year rule could be interpreted to include and would be applied to changes of ownership. One commenter recommended requiring that a new institution exist as a main campus for at least two years before a change of ownership would be approved. Three other commenters recommended that the two-year rule be applied to institutions that change ownership or that institutions that change ownership be required to establish escrow agreements.

Discussion: Interpretation of the two-year rule as applicable to institutions that change ownership was neither contemplated by the Secretary when the NPRM was developed nor addressed in the NPRM. The recently reauthorized and amended HEA, however, does address changes of ownership. When the Secretary proposes changes to the regulations governing changes of ownership to reflect the amended HEA, he will consider comments on the issue.

Changes: None.

Comment: One commenter believed §600.31(a)(6) needed to be clarified for those institutions that, for the purpose of simplicity, have grouped two or more main institutions under one school identification number. The commenter went on to say that these institutions should not be prevented from separating from each other as they actually are separate, main institutions in every respect other than the way in which their student financial aid forms are filed.

Discussion: Section 600.31(a)(6) addresses the situation in which there is only eligible main institution, with one school identification number (OPE ID), that divides into two or more main institutions. The commenter is referring to situations in which several independently eligible main institutions, each of which has its own OPE ID number, request, and are permitted by the Secretary, to use one OPE ID number to file combined applications and reports for the campus-based and Pell Grant programs. This is purely a funding arrangement that neither reflects nor affects the eligibility status of the individual institutions participating in the arrangement. The commenter is reminded, however, that even if this funding option is exercised for the campus-based and Pell Grant programs, a freestanding institution that has been issued an individual OPE ID number must use that identification number when certifying applications for the Federal Family Education Loan Program (formerly the Guaranteed Student Loan Programs) for its students.

Changes: None.

March 10, 1993 Federal Register Supplementary Information

The purpose of these regulations is to improve the efficiency of Federal postsecondary education programs and, by doing so, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high

quality postsecondary education are important elements of the National Education Goals.

These regulations modify three features or elements of the Department of Education's (Department's) procedures regarding administrative actions taken to enforce program requirements. First, the regulations permit parties to file certain documents in administrative proceedings by facsimile. Second, the regulations clarify and explain the administrative actions the Secretary may take when an institution or part of an institution ceases to satisfy applicable eligibility requirements. Third, the regulations clarify and explain the manner in which the Secretary uses the emergency action authority available under section 487 of the HEA.

Filing Documents by Facsimile

In recognition of the increasing reliability and convenience of facsimile technology, these regulations reflect the Department's effort to accommodate the public by revising the existing regulations to permit the submission of certain filings in Department administrative proceedings by facsimile. The regulations change the existing regulations only regarding filings that the Department reasonably can accept by facsimile, given its existing facsimile technology and resources.

Specifically, the Department's existing regulations governing administrative proceedings pursuant to 34 CFR 600.41 and subparts B, G, and H of part 668 of title 34 of the Code of Federal Regulations are amended to permit hearing requests and certain other documents required in administrative proceedings to be filed by facsimile, as well as by hand-delivery or mail. Where a filing may be permitted by facsimile, the Department will give the affected party timely written notice of the name and facsimile telephone number of the department official to whom a facsimile filing must be transmitted. The existing regulations also are amended to provide that documents submitted by facsimile are filed on the date the facsimile transmission is sent, that parties who file documents by facsimile are responsible for confirming that a complete and legible document is received by the Department, and that the hearing officer or other designated department official may require a follow-up hard copy of documents filed by facsimile. Finally, these final regulations state that the Secretary discourages facsimile transmission of documents longer than five pages.

Loss of Eligibility and Emergency Action

On August 7, 1990, the Secretary promulgated final regulations amending 34 CFR parts 600 and 668.55 FR 32180. Those amendments made two principal changes to those parts: They added 34 CFR 600.41, which provides an opportunity for an administrative appeal under section 487(c) of the HEA for an institution that the Department of Education (ED) considers no longer to qualify as an eligible institution under the HEA, and revised 34 CFR 668.83 to conform to the statutory amendments to the HEA that expressly authorized ED to take emergency action against an institution. The Secretary concurrently issued a notice of proposed rulemaking (NPRM) on these same regulations, inviting public comment on the provisions published that day as final regulations. 55 FR 32186. Based on a careful consideration of both the public comments received in response to the NPRM and ED's experience in proceedings conducted under the final regulations, the Secretary is making in these final regulations a number of significant revisions to the August 7, 1990 regulations.

Consequences of Loss of Eligibility

A number of clarifying and conforming changes are made here to those provisions, including §600.41, that explain the actions an institution may take after a loss of eligibility occurs or an emergency action is imposed. On July 19, 1991, the Secretary amended 34 CFR 668.25 to prescribe the actions to disburse Title IV, HEA program funds that an institution may take after it loses eligibility. 56 FR 33341. Under the amended §668.25, an institution that loses its eligibility to participate in Title IV, HEA programs during a payment period, but continues to provide educational instruction until the scheduled completion of the payment period or period of enrollment, may make payments of Title IV, HEA student financial assistance to a student who is enrolled on the date of the institution's loss of eligibility in the following manner: For a Pell Grant or campus-based program aid, the institution may disburse funds for the payment period during which the loss of eligibility occurred if the institution made a commitment to the student for that aid prior to the date on which the loss of eligibility occurred. 34 CFR 668.25(c)(1). The institution may release to the student all proceeds of a Federal Family Education Loan Program loan (including a Federal Stafford Loan, Federal PLUS loan or Federal SLS program loan) made for an enrollment period that began prior to the loss of eligibility if the institution had released at least one disbursement of that loan to the student before the date of loss of eligibility. 34 CFR 668.25(c)(2).

The Secretary may require an institution to meet its closeout obligations regarding audits, disposition of records, transfer of Perkins Loans, and satisfaction of refund obligations before it may make, or receive additional funds for, these final disbursements. If the loss of eligibility affects only a location or educational program of the institution, the Secretary may limit the eligibility of the institution by requiring the institution to follow a particular procedure to ensure that title IV, HEA program funds are not thereafter used for the ineligible location or program.

The same standards are meant to be applied in terminations of eligibility under both 34 CFR part 668 and part 660; the specific provisions previously contained in 34 CFR 668.25(c) governing these disbursements of Title IV, HEA program funds also were included in 34 CFR 668.94, which, in turn, was referenced in §600.41(d). To clarify that the same rule applies in terminations based on loss of eligibility and terminations for violation of participation requirements, both §§600.41(d) and 668.94(b) are being revised here to refer to §668.25.

Loss of Institutional Eligibility; Consequences With Respect to Obligations Under the Federal Family Education Loan Program

ED's recent experience applying regulations that address the consequences of loss of institutional eligibility for FFELP loan transactions suggests the need to clarify the effect of §600.40 (and §668.25) on the obligations of both institutions and borrowers. Both regulations address the institution's responsibility to ED with respect to a loss of eligibility. They permit the institution to deliver loan proceeds to students after the effective date of the loss of eligibility, but the regulations are not intended to create any other rights for

student borrowers or to suggest that borrowers are excused from repaying loans received to attend that institution.

Section 668.25(c) requires an institution that loses eligibility to return to the lender the proceeds of FFELP loans it receives other than proceeds of loans that were partially disbursed to the borrower prior to the date of the loss of eligibility. This direction in §668.25(c) refers to loan proceeds received from the lender by check or electronic funds transfer and held by the institution for delivery to the borrower, not loan proceeds that have already been delivered to the borrower and applied to educational expenses.

The institution becomes subject to §668.25 after the termination becomes final with respect to loan proceeds it still holds for delivery or thereafter receives from the lender. However, under §600.40(a) as currently in effect and as amended in these regulations, the effective date of the loss of eligibility is the date on which the institution ceased or failed to meet an element of the standards for eligibility. In proceedings under §600.41, that date will ordinarily be well before the date on which the termination action becomes final. The institution may have delivered loan proceeds and disbursed other Title IV, HEA program assistance after the effective date, and the Secretary holds the institution liable for the full costs to the government of that aid provided after the effective date of the loss of eligibility.

For Title IV, HEA program assistance provided from Federal funds ED advanced to the institution, the cost of that assistance is clearly the actual amount of Federal funds the institution provided to students after that effective date. However, under the FFELP, ED provides no Federal funds to the institution itself. The financial loss to the government caused by guaranteed loans made after the effective date of the loss of eligibility is not the amount of funds advanced on guaranteed loans received for its students, because those funds are advanced by lenders, not ED. Rather, the loss to the government is the cost of the subsidies paid to holders of those loans and the costs of defaults on those loans for which the government is contingently liable under its reinsurance agreements with guarantee agencies.

To recoup the loss to the government for the FFELP loans received by borrowers after the effective date of the loss of eligibility, therefore, ED holds the institution liable for the actual cost of the subsidies paid to lenders and the cost of defaults on those loans. ED passes the cost of defaults on to the institution either by requiring the institution to pay ED the actual amount of reinsurance payments already paid and the estimated amount of reinsurance payments that will be paid on those loans, or by requiring the institution to assume the risk of loss on those loans by purchasing those loans from the lender or guarantee agencies that now hold them.

Where ED chooses to require an institution to purchase from their respective holders those FFELP loans made after the effective date of the institution's loss of eligibility, ED does no more than remedy the unauthorized imposition on the government of contingent liability for defaults on those loans. If the institution in fact purchases those loans from the holders, the loans no longer qualify for Federal reinsurance or subsidies. Further, it is unlikely that the guarantee agency will continue to insure the loans. However, the loans would be enforceable by the institution, according to their terms, as its own receivables.

Because ED regulations have permitted the lender to rely in good faith (absent an origination relationship) on representations made in FFELP loan applications by both the borrower and the institution, ED generally holds the lender harmless from the consequences of a lapse of institutional eligibility. To hold the lender harmless in these situations, ED must continue to subsidize and reinsure those loans that the ineligible institution does not purchase. Whether these loans are assigned to the institution or, as is more likely, the loans remain with the lender or guarantee agency, ED considers the loss of institutional eligibility to affect directly only the liability of the institution for Federal subsidies and reinsurance paid on those loans. In either case, the borrower retains all the rights with respect to loan repayment that are contained in the terms of the loan agreements, and ED does not suggest that these loans, whether held by the institution or the lender, are legally unenforceable merely because they were made after the effective date of the loss of institutional eligibility.

PART 652-NATIONAL SCIENCE SCHOLARS PROGRAM

Subpart A-General

Subpart B-How Does a Student Apply for a Scholarship?

Subpart C-What Are the Administrative Responsibilities of a State?

Subpart D-How Are Scholars Nominated and Selected?

Subpart E-What Condition Must Be Met By Scholars?

Subpart F-What Are the Administrative Responsibilities of the Institutions of Higher Education at Which NSSP Scholars Are Enrolled?

Appendix-Analysis of Comments and Changes

Authority: 20 U.S.C. 5381 to 5386, unless otherwise noted.

Subpart A-General

Sec. 652.1 What is the National Science Scholars Program?

Under the National Science Scholars Program (NSSP) the Secretary awards scholarships to students who have demonstrated outstanding academic achievement, who show promise of continued outstanding academic performance, and who are selected by the President, for the following purposes:

(a) To recognize student excellence and achievement in the physical, life, and computer sciences, mathematics, and engineering.

(b) To provide financial assistance to students to continue their postsecondary education in those fields of study at sustained outstanding levels of performance.

(c) To contribute to strengthening the leadership of the United States in those fields.

(d) To strengthen the United States' mathematics, science, and engineering base by offering opportunities to pursue postsecondary education in physical, life, and computer sciences, mathematics, and engineering.

(e) To encourage role models in scientific, mathematics, and engineering fields for young people.

(f) To strengthen the United States' mathematics, scientific, and engineering potential by encouraging equal participation of women with men in mathematics, scientific, and engineering fields.

(g) To attract talented students to teaching careers in mathematics and science in elementary and secondary schools.

(Authority: 20 U.S.C. 5381)

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Sec. 652.2 Who is eligible to apply for a scholarship under this program?

An individual is eligible to apply for an initial scholarship under the NSSP if the individual—

(a) Is scheduled to graduate from a public or private secondary school or to obtain the recognized equivalent of a high school diploma, as defined in 34 CFR 600.2, during the award year prior to the award year in which the NSSP scholarship is to be awarded;

(b)(1) Is a citizen or national of the United States; or

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(c) Has demonstrated outstanding academic achievement in secondary school in the physical, life, or computer sciences, mathematics, or engineering as determined by the State nominating committee established under Sec. 652.20;

(d) Demonstrates to the State nominating committee that he or she intends to apply for enrollment at an institution of higher education as a full-time undergraduate student for the purpose of receiving a baccalaureate degree and has not accepted an appointment to a U. S. service academy, such as the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, and the U.S. Merchant Marine Academy; and

(e) Demonstrates to the State nominating committee that he or she intends to major, at an institution of higher education, in one of the physical, life, or computer sciences, mathematics, or engineering.

(Authority: 20 U.S.C. 5384)

Sec. 652.3 How are awards distributed?

(a) In each award year, the Secretary awards one initial scholarship to each of two eligible Scholars selected by the President under Sec. 652.33 from each congressional district.

(b) The Secretary disburses the scholarship proceeds, on behalf of each Scholar selected by the President, to the institution of higher education at which each Scholar is enrolled.

(c) A student awarded a scholarship under this part may attend any institution of higher education, as defined in Sec. 652.6, that enters into an agreement with the Secretary under Sec. 652.50, for the purpose of obtaining a baccalaureate degree in the physical, life, or computer sciences, mathematics, or engineering.

(Authority: 20 U.S.C. 5382 and 5383)

Sec. 652.4 In what amounts are scholarships awarded?

(a) Except as provided in paragraphs (b) and (c) of this section, the amount of a scholarship awarded under this part for a full-time student for any academic year is $5,000.

(b) The Secretary reduces the scholarship amount awarded under this part by the amount that the scholarship would otherwise exceed the Scholar's cost of attendance, as defined in section 472 of the Higher Education Act of 1965, as amended.

(c) In the event that funds available in a fiscal year are insufficient to fund fully each award under this part, the Secretary reduces proportionately each scholarship and the amount paid to each Scholar.

(Authority: 20 U.S.C. 5385)

Sec. 652.5 What regulations apply to this program?

The following regulations apply to the National Science Scholars Program:

(a) The Education Department General Administrative Regulations (EDGAR), as follows, except as provided in paragraph (b) of this section:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) except for the following:

(i) Subpart C (How to Apply for a Grant).

(ii) Sections 75.200 through 75.216, 75.218, and 75.220 through 75.261 of subpart D (How Grants Are Made).

(iii) Sections 75.580 through 75.592 of subpart E (What Conditions Must Be Met By a Grantee?).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act-Enforcement)

(6) 34 CFR part 82 (New Restrictions on Lobbying)

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) For the purposes of the regulations in this part, the terms "grantee" and "recipient," as used in EDGAR, mean an institution of higher education that administers a scholarship award on behalf of a National Science Scholar.

(c) The regulations in this part 652.

(Authority: 20 U.S.C. 5381 to 5386)

Sec. 652.6 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) Definitions in the Act. The following terms are defined in sections 603(b)(5) and 602(d) of the Act:

Congressional district.

National Science Scholar (Scholar).

(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant.

Application.

Award.

Department.

Fiscal Year.

Private.

Secondary school.

Secretary.

State.

(c) Other definitions that apply to this part. The following additional definitions apply to this part:

Academic year means—

(1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters, at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system; or

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system.

Act means the Excellence in Mathematics, Science and Engineering Education Act of 1990.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Computer sciences means the branch of knowledge or study of computers. The term encompasses, but is not limited to, such fields of knowledge or study as computer hardware, computer software, computer engineering, information systems, and robotics.

Director means the Director of the National Science Foundation.

Engineering means the science by which the properties of matter and the sources of energy in nature are made useful to humanity in structures, machines and products as in the construction of engines, bridges, buildings, mines, and chemical plants. The term encompasses, but is not limited to, such fields of knowledge or study as aeronautical engineering, chemical engineering, civil engineering, electrical engineering, industrial engineering, materials engineering, and mechanical engineering.

Full-time student means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's educational program.

Institution of higher education (institution) means an institution of higher education as defined in 34 CFR 600.4 (institutional eligibility regulations).

Life sciences means the branch of knowledge or study of living things. The term encompasses, but is not limited to, such fields of knowledge or study as biology, biochemistry, biophysics, microbiology, genetics, physiology, botany, zoology, ecology, and behavioral biology. This term does not encompass social psychology or the health professions.

Mathematics means the branch of knowledge or study of numbers and the systematic treatment of magnitude, relationships between figures and forms, and relations between quantities expressed symbolically. The term encompasses, but is not limited to, such fields of knowledge or study as statistics, applied mathematics, and operations research.

Physical sciences means the branch of knowledge or study of the material universe. The term encompasses, but is not limited to, such fields of knowledge or study as astronomy, atmospheric sciences, chemistry, earth sciences, ocean sciences, and physics.

Scholarship means an award made to an individual in an award year under this part for one academic year.

Scholarship disciplines means the physical, life, and computer sciences, mathematics, and engineering.

(Authority: 20 U.S.C 5381 to 5386)

Subpart B-How Does A Student Apply for a Scholarship?

Sec. 652.10 How does a student apply for a scholarship?

(a) To apply for a scholarship under this part, an individual, who meets the eligibility requirements of Sec. 652.2, must submit an application as required by the State nominating committee administering the NSSP in the State of his or her legal residence.

(b) In his or her application, the applicant shall address the selection criteria contained in Sec. 652.32.

(c) The applicant shall submit the application to the State nominating committee within the deadline established by the committee.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5383)

Subpart C-What Are the Administrative Responsibilities of a State?

Sec. 652.20 How does a State establish a nominating committee?

(a) To participate in the NSSP, a State shall establish a nominating committee for the purpose of nominating students for NSSP scholarships.

(b) The State nominating committee may be appointed either by the Chief State School Officer (CSSO) or by an existing grant agency or panel that was previously designated by the CSSO.

(c) Before the nominating committee may begin to fulfill its functions under Sec. 652.21, the CSSO, grant agency, or panel that appoints the nominating committee shall submit for the Secretary's approval the names and qualifications of the individuals to be appointed.

(d) The nominating committee must include, but is not limited to, the following:

(1) At least one individual from each of the following fields:

(i) Education.

(ii) Science.

(iii) Mathematics.

(iv) Engineering.

(2) At least two faculty members each teaching in a different scholarship discipline at the postsecondary level.

(3) At least one teacher teaching in one or more of the scholarship disciplines at the secondary level.

(4) At least one person who is a scientist, mathematician, or engineer from a private-sector business that is oriented to the sciences, mathematics, or engineering.

(5) At least one admissions officer from an institution of higher education.

(e) An individual representing one of the nominating committee membership categories under paragraphs (d) (2) through (5) of this section, may, if qualified, also represent a category in paragraph (d)(1) of this section.

(f) Each State shall require that its State nominating committee members serve as volunteers without compensation.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5383)

Sec. 652.21 What are the responsibilities of a State and its nominating committee?

Each State shall require its nominating committee to establish operating procedures governing the scholarship nomination process that include—

(a) The dissemination of program information and application materials to the State's public and private secondary schools and GED test centers;

(b) The promotion of participation in the NSSP by students from groups underrepresented in the scholarship disciplines, such as students from minority groups, students with disabilities, or students who are economically disadvantaged; and

(c) The establishment of written internal administrative procedures for—

(1) The timely submission, processing, and review of applications submitted by eligible students; and

(2) The resolution of conflicts of interest of members of the nominating committee.

(Authority: 20 U.S.C. 5383)

Sec. 652.22 What records must a State maintain?

The CSSO, State agency, or panel that appoints the nominating committee under Sec. 652.20(b) shall maintain all student applications and the records and written procedures related to the selection of nominees for a scholarship competition for a period of 5 award years following the award year of the scholarship competition.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5383 and 5384)

Subpart D-How Are Scholars Nominated and Selected?

Sec. 652.30 How are Scholars nominated?

(a) Scholars are nominated by State nominating committees that are established in accordance with Sec. 652.20.

(b) Each State nominating committee shall review and evaluate the applications received each year under this program.

(c) Each State nominating committee shall select nominees in accordance with the program eligibility requirements for an initial award. Each State nominating committee may adopt one or more minimum standards to demonstrate outstanding academic achievement at the secondary school level that may include such standards as an overall minimum grade point average or a minimum class rank combined with a minimum grade point average in the sciences, mathematics, and engineering.

(d) Each State nominating committee shall submit to the President the nominations of at least four applicants legally residing in each congressional district in the State, at least half of whom must be female. The nominations must be—

(1) Ranked in order of evaluated score; and

(2) Submitted to the Secretary, who receives the nominations on behalf of the President, in the manner and by the date established by the Secretary in a notice published in the Federal Register.

(e) Each nominating committee shall provide the following information for each nominee to the Secretary:

(1) Name.

(2) Sex.

(3) Address.

(4) Telephone number.

(5) Social security number (if provided by the nominee).

(6) Congressional district and name of Representative or Delegate.

(7) Other information that the Secretary considers necessary for the proper administration of the program.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5383)

Sec. 652.31 How shall a State nominating committee evaluate an application?

(a) Each State nominating committee shall evaluate an application on the basis of the selection criteria in Sec. 652.32.

(b) The committee shall give each of the selection criteria equal weight.

(c) The State nominating committee shall score each applicant's responses to the selection criteria in Sec. 652.32 using the following scale: 5 (truly exceptional), 4 (outstanding), 3 (excellent), 2 (good), 1 (fair), 0 (poor).

(d) Each applicant may receive a maximum of 25 points.

(Authority: 20 U.S.C. 5383)

Sec. 652.32 What selection criteria shall the State nominating committee use?

The State nominating committee shall use the following selection criteria to evaluate and rate applications:

(a) Evidence of exceptional academic achievement at the secondary level. The nominating committee shall rate the applicant's overall academic achievement at the secondary level by considering one or more of the following:

(1) High school class rank and grades.

(2) For an applicant who is earning the recognized equivalent of a high school diploma in lieu of graduating from high school, the applicant's score on the high school equivalency examination and high school record before leaving school.

(3)(i) The applicant's composite score on the ACT Assessment;

(ii) The sum of the applicant's verbal and quantitative scores on the Scholastic Aptitude Test (SAT); or

(iii) Both the composite score on the ACT Assessment and the sum of the applicant's SAT scores.

(b) Evidence of exceptional nonacademic accomplishment in extracurricular areas and in the physical, life, or computer sciences, mathematics, or engineering. The nominating committee shall rate the applicant's achievement in activities in areas such as community service, leadership, and artistic an athletic performance along with achievement outside the classroom in the sciences, mathematics, and engineering.

(c) Letters of reference. The nominating committee shall rate letters of reference written by three individuals chosen by the applicant and determine the degree to which these letters reflect the applicant's qualifications for a National Science Scholarship, based upon relevant factors such as—

(1) The author's qualifications to provide a recommendation for the particular applicant;

(2) The extent to which each letter of reference describes the applicant's motivation and potential to pursue a career in the physical, life, or computer sciences, mathematics, or engineering; or

(3) The extent to which each letter of reference describes the applicant's overall potential and abilities.

(d) Applicant essay. The applicant must write an essay that the nominating committee shall analyze and rate. The essay of 500 words or less must be on a topic that the applicant chooses and considers to be of interest to the nominating committee. The essay must reflect the applicant's motivation to pursue a career in the physical, life, or computer sciences, mathematics, or engineering, and otherwise be of relevance to the committee's determination of the applicant's qualification for a National Science Scholarship.

(e) Meeting the purposes of the authorizing statute. The nominating committee shall rate each application to determine how well it meets the purposes of the National Science Scholars Program as set forth in Sec. 652.1.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5381-5383)

Sec. 652.33 How are Scholars selected?

(a) For each award year, after consultation with the Secretary and the Director of the National Science Foundation, the President selects and announces from among

the nominees submitted by State nominating committees under Sec. 652.30, two National Science Scholars legally residing in each congressional district.

(b) The selection of National Science Scholars is announced prior to January 1 of each fiscal year for which funds are appropriated.

(Authority: 20 U.S.C. 5383)

Subpart E-What Conditions Must Be Met By Scholars?

Sec. 652.40 What requirements must a Scholar meet in order to receive a scholarship?

To be eligible to receive a scholarship, a Scholar who has been selected by the President under Sec. 652.33, must—

(a) Meet the eligibility requirements in Sec. 652.2;

(b) Have been accepted for enrollment at an institution of higher education other than a U.S. service academy, such as the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, and the U.S. Merchant Marine Academy, as a full-time undergraduate student (as determined by the institution) for the purpose of obtaining a baccalaureate degree;

(c) Have declared a major in one of the physical, life, or computer sciences, mathematics, or engineering, or have provided a written statement to the institution of higher education of his or her intent to major in one of these fields of study if it is the policy of the institution at which the Scholar has been accepted for enrollment that students not declare a major until a later point in their course of study; and

(d) Have filed with the institution he or she plans to attend or is attending, a Statement of Educational Purpose in accordance with 34 CFR 668.32 of the Student Assistance General Provisions regulations.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5381 and 5383)

Sec. 652.41 What is the duration of a scholarship?

(a) In the first award year after a Scholar is selected by the President, the Scholar receives his or her initial scholarship, for a period of one academic year, for his or her first year of undergraduate study in one of the scholarship disciplines at an institution of higher education.

(b) Except for a Scholar covered in paragraph (c) of this section, a Scholar who satisfies the requirements of Sec. 652.42 may receive up to three additional scholarships in subsequent award years, each awarded for a period of one academic year, in order to complete his or her undergraduate course of study.

(c) A Scholar who satisfies the requirements of Sec. 652.42 and who is enrolled in an undergraduate course of study that requires attendance for five academic years may receive additional scholarships for not more than four additional academic years of undergraduate study.

(Authority: 20 U.S.C. 5382)

Sec. 652.42 What are the requirements for a Scholar to continue to receive scholarship payments under the NSSP?

A Scholar who has received a scholarship under this part for at least one year of undergraduate study is eligible to receive a scholarship for a subsequent year of undergraduate study under Sec. 652.41(b) or (c), if, at the beginning of that subsequent academic year, the Scholar—

(a) Is enrolled as a full-time student at an institution of higher education for the purpose of receiving a baccalaureate degree, unless the institution has determined that unusual circumstances justify waiver of the full-time attendance requirement and the Secretary has waived the full-time attendance requirement as provided for in Sec. 652.43(b);

(b) Continues to major in one of the scholarship disciplines, or provides a written assurance to both the State and the institution of higher education at which the Scholar is enrolled of his or her intent to major in one of the scholarship disciplines, if it is the policy of that institution that a student not declare a major until later in his or her course of study; and

(c) Maintains a high level of academic achievement, as defined by the institution, in—

(1) His or her overall course of study;

(2) Those science, mathematics, or engineering courses in which the Scholar has enrolled; and

(3) The Scholar's major, if declared.

(Approved by the Office of Management and Budget under control number 1840-0629)

(Authority: 20 U.S.C. 5382 and 5384)

Sec. 652.43 What are the consequences of a Scholar's noncompliance with the scholarship eligibility requirements in Secs. 652.40 or 652.42?

(a)(1) Except as provided in paragraph (b) of this section, if an institution of higher education finds that a Scholar fails to meet the requirements of Secs. 652.40 or 652.42 within an award year, the institution shall suspend the Scholar's eligibility to receive further scholarships, or scholarship proceeds.

(2) A suspension of a Scholar's eligibility for failure to meet the requirements of Secs. 652.40 or 652.42 must remain in effect until the Scholar is able to demonstrate to the satisfaction of the institution that he or she is in compliance with all applicable scholarship eligibility requirements, including renewal requirements in Sec. 652.42 and reinstatement requirements in Sec. 652.44.

(3) If the total period of suspension exceeds 12 months, the Scholar's eligibility for NSSP scholarships shall be terminated.

(b) The Secretary may waive the full-time attendance requirement in Sec. 652.40 and Sec. 652.42 for periods during which the institution determines that unusual circumstances have caused the Scholar's noncompliance with the full-time attendance requirement of Sec. 652.42(a) and that suspension of scholarship eligibility would cause a Scholar undue hardship.

(c) If a Scholar's full-time attendance requirement is waived under paragraph (b) of this section, he or she may continue to receive a scholarship payment. The institution shall prorate the payment according to the Scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a Scholar for whom the full-time enrollment requirement is waived by the Secretary is enrolled as a half-time student for one semester, he or she is eligible to receive one-half of the scholarship payment for a full-time student for that semester. Therefore, if the institution makes disbursements in equal amounts, the Scholar would receive one-quarter of his or her scholarship during that semester, which would count as one-fourth of a year for purposes of the four-year limit.

(Authority: 20 U.S.C. 5384)

Sec. 652.44 Under what conditions may scholarship eligibility be reinstated?

A Scholar whose eligibility is suspended under Sec. 652.43(a), such as a Scholar whose attendance at an institution of higher education was interrupted for reasons including, but not limited to, pregnancy, child-rearing, or other family responsibilities, may have his or her scholarship eligibility reinstated by the institution of higher education at which he or she is enrolled if—

(a) The period of suspension or interruption was for a period of no more than 12 months unless the institution determines that the 12-month limitation should be waived due to exceptional circumstances; and

(b) The Scholar demonstrates to the institution that he or she is in compliance with the relevant eligibility and renewal requirements in Secs. 652.40 and 652.42.

(Authority: 20 U.S.C. 5384)

Subpart F-What Are the Administrative Responsibilities of the Institutions of Higher Education at Which NSSP Scholars Are Enrolled?

Sec. 652.50 What institutional agreement is required?

Any institution at which one or more NSSP Scholars are enrolled shall enter into an agreement with the Secretary under which the institution shall agree to comply with the provisions of the Act and of this part, including providing annual assurances of the eligibility of enrolled Scholars under Secs. 652.40 and 652.42 and the awarding of scholarships to those Scholars.

(Authority: 20 U.S.C. 5383 and 5384)

Sec. 652.51 How are scholarships to be administered by institutions of higher education?

(a) The Secretary sends a roster of Scholars and a notification of an allocation of scholarship funds for each award year to an institution of higher education that has entered into an agreement with the Secretary under Sec. 652.50.

(b) An institution of higher education may not disburse scholarship funds to a Scholar until the Scholar is attending classes at that institution of higher education and meets the other eligibility requirements in Sec. 652.40 and, if applicable, the renewal requirements of Sec. 652.42.

(c) The institution shall award the Scholar a scholarship for an amount that is determined under Sec. 652.4.

(d) The institution of higher education in which a Scholar is enrolled for the purpose of obtaining a degree may allow another institution or organization to provide a portion of the Scholar's program of study if the institution at which the Scholar is enrolled to obtain his or her degree—

(1) Enters into a written agreement with the other institution or organization which is in accordance with the provisions of 34 CFR 600.9 and which, if the other institution has entered into an agreement with the Secretary under Sec. 652.50, is in accordance with the provisions governing written agreements between two eligible institutions in 34 CFR 690.9 of the Pell Grant Program regulations; and

(2) Ensures that the Scholar continues to meet the requirements in subpart E of this part.

(Authority: 20 U.S.C. 5383-5385)

Sec. 652.52 How are scholarship awards to be made and scholarship proceeds returned and transferred?

(a) An institution shall provide scholarship proceeds to a Scholar in at least two payments per academic year.

(b) In the event that a Scholar refuses a scholarship, does not attend courses, transfers to another institution, or becomes ineligible for a scholarship and cannot be reinstated in the same award year, the institution shall return the scholarship proceeds to the Secretary.

(c) A Scholar who ceases to be eligible for NSSP scholarship proceeds at an institution before completion of an academic period for which payment of a scholarship award has been received is only eligible for a prorated portion of the scholarship award and is liable to the Secretary for any overpayment. The prorated portion of the scholarship to be returned to the Secretary must be in proportion to the portion of the academic period during which the Scholar was ineligible for a scholarship. The institution shall return the overpayment to the Secretary in accordance with the provisions governing the recovery of overpayments in 34 CFR 690.79 of the Pell Grant Program regulations.

(d) The institution shall pay a pro rata share of the scholarship for which the Scholar is eligible if he or she enrolls for less than a full academic year to complete his or her baccalaureate degree. The institution shall return the remaining share of the scholarship to the Secretary.

(e) If a Scholar transfers to another institution of higher education during an award year, the institution in which the Scholar was originally enrolled shall calculate, and immediately inform the Secretary of, the amount of the scholarship disbursed to the Scholar at that institution and the amount of the award that remains to be disbursed for the award year. The Secretary will then reallocate the undisbursed funds from the original institution to the institution to which the Scholar has transferred. As long as the new institution to which the Scholar transfers determines that the Scholar meets the provisions of Secs. 652.40 and 652.42, it may continue to provide scholarship funds to the Scholar.

(Authority: 20 U.S.C. 5383 and 5384)

Sec. 652.53 What reports are required from an institution?

(a) Prior to the receipt of funds for disbursement to a Scholar, an institution of higher education shall provide to the Secretary the following:

(1) For a Scholar receiving his or her initial scholarship, a statement from the appropriate official at the institution indicating—

(i) (A) That the Scholar has provided the institution with a written formal commitment to attend the institution for the relevant academic year and has complied with any other institutional requirements for indicating such a commitment including a monetary deposit; or

(B) That the Scholar is currently in attendance at that institution for the relevant academic year; and

(ii) The Scholar's cost of attendance.

(2) For a Scholar who is eligible to receive an additional award in a subsequent award year, a statement from the appropriate official at the institution indicating that the Scholar is in compliance with the renewal requirements of Sec. 652.42.

(b) An institution shall provide such reports to the Secretary as are necessary to carry out the Secretary's functions under this part, in accordance with departmental requirements in EDGAR.

(Authority: 20 U.S.C. 5384)

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Appendix—Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 11 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor issues—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 652.1 What is the National Science Scholars Program?

Comment: One commenter requested that the Secretary clarify Sec. 652.1(g) of the NPRM that discusses attracting talented students to teaching careers in mathematics and science because some applicants might argue that education majors were entitled to scholarships under the NSSP. Another commenter asserted that references in the NPRM to teaching should be deleted since encouraging teaching careers is not a purpose of the program.

Discussion: Section 652.1 Discusses the general purposes of the NSSP. One of those purposes under section 601(a)(7) of the Act is to attract talented mathematics and science students to pursue careers in teaching. While a student majoring in education would not be eligible to receive funds under this program, a student pursuing a major in mathematics, science, or engineering and incorporating into his or her degree program the coursework necessary to qualify as a teacher may be eligible to be a Scholar.

Changes: None.

Section 652.2 Who is Eligible to Apply for a Scholarship Under This Program? and Section 652.40 What Requirements Must a Scholar Meet in Order to Receive a Scholarship?

Comments: One commenter requested clarification about whether students who attended the U.S. service academies such as the U.S. Naval Academy would be eligible to apply for the NSSP and, if so, how the Secretary would administer awards to these Scholars.

Discussion: The Secretary has determined that there are no costs incurred by students attending U.S. service academies. Since the amount of a scholarship awarded under this program is limited in section 605(b) of the Act to the Scholar's cost of attendance as defined in Part F of the Higher Education Act of 1965, as amended (HEA), students attending U.S. service academies do not qualify for scholarships under this program. A student who has accepted an appointment to a U.S. service academy cannot receive financial assistance to continue his or her postsecondary education, which is one of the purposes of the NSSP as stated in section 601(a)(2) of the Act. Therefore, the student would be ineligible to apply.

However, all students who apply to U.S. service academies are not ineligible. An otherwise eligible student under Sec. 652.2 who applies to an academy, but has not yet been appointed, is eligible to apply for an NSSP scholarship. Such a student may be selected as a Scholar, accept the award, but then be notified of and accept an appointment to a U.S. service academy. The Secretary has determined that in this circumstance the student becomes ineligible to be a Scholar.

Because a Scholar becomes ineligible to receive an NSSP scholarship by accepting an appointment to a U.S. service academy, the Secretary would select an alternate NSSP Scholar from the same congressional district to receive the scholarship.

Changes: Section 652.2(d) of the proposed regulations is modified to exclude a student who has

accepted an appointment to a U.S. service academy from eligibility to apply for an NSSP scholarship, and Sec. 652.40(b) is also modified to clarify that Scholars appointed to U.S. service academies are ineligible to receive a scholarship.

Comment: One commenter recommended that the Secretary revise the requirement in Sec. 652.2(c) that an applicant demonstrate outstanding academic achievement in secondary school in the scholarship disciplines by adding a provision that an applicant may qualify by demonstrating an "academic potential for outstanding work in such fields."

Discussion: Section 602(a)(2) of the Act requires that NSSP scholarships be awarded to students who have already demonstrated outstanding academic achievement in the physical, life, or computer sciences, mathematics, or engineering.

Changes: None.

Comment: One commenter proposed that the Secretary eliminate the eligibility requirement in Sec. 652.2(d) that applicants declare their intention to undertake a program of study leading to a baccalaureate degree. The commenter believed that students who intended to go into programs that were directed at applied skills for employment in the mathematics and sciences should also be eligible for an NSSP scholarship.

Discussion: The Secretary believes that the purpose of the NSSP is to provide scholarships for the pursuit of a baccalaureate degree, including scholarships to students who enroll in educational programs for transfer to a baccalaureate degree program. For example, a student who enrolls at a community college in a program for transfer to a baccalaureate degree program would be eligible to apply; however, an individual pursuing a terminal occupational undergraduate program of study of less than 4 years would not be eligible to apply.

Changes: None.

Section 652.6 What Definitions Apply to This Program?

Comment: One commenter recommended that the definition for engineering be modified to read "Engineering means the science by which the properties of matter and the sources of energy in nature are made economically useful to humanity * * *."

Discussion: The Secretary believes that the field of engineering encompasses a broader scope of scientific exploration than just those that are "economically useful." Some engineering endeavors and accomplishments increase human knowledge without being immediately economically useful.

Changes: None.

Section 652.20 How Does a State Establish a Nominating Committee?

Comment: One commenter thought that the prescribed composition of the State nominating committee is too heavily weighted toward educators. Another commenter did not understand how an admissions officer from an institution of higher education could contribute to the committee and believed that the addition of this individual to the committee would cause an unnecessary increase in the State's administrative costs. Another commenter inquired about adding a financial aid officer to the committee to assist in financial need issues. A fourth commenter asked whether a State requiring a larger number of committee members would be limited to those specified in the NPRM.

Discussion: The composition of the State nominating committee is not limited to those individuals prescribed by the regulations. The regulations merely establish minimum requirements. The State, at its option, may appoint additional members to the committee from the education, business, or scientific community that the State determines will best meet its needs in fulfilling its duties under the program.

The Secretary is requiring that an admissions officer be on the committee because an admissions officer is a professional involved with reviewing applicants for admission to colleges and universities. The Secretary believes that the experience of an admissions officer would provide members of the State nominating committee with insights into distinguishing the most outstanding applicants from among the applicants.

The information to determine financial need of an applicant is not available at the time an applicant is evaluated by a State nominating committee, and the addition of a financial aid officer's professional expertise is, thus, not required. However, a State is not prohibited from adding a financial aid officer to the membership of its State nominating committee.

Changes: None.

Section 652.21 What are the Responsibilities of a State and its Nominating Committees?

Comment: One commenter asked if a State could combine the NSSP application form with other application forms for such programs as the Robert C. Byrd Honors Scholarship Program or the Paul Douglas Teacher Scholarship Program. The commenter also asked if a State could use applications received from applicants for another scholarship program that had similar application requirements and evaluate those applicants for the NSSP. The commenter believed that this procedure would be less costly and more efficient for the State.

Discussion: The Secretary believes that some of the information required in the selection criteria in Sec. 652.32 is unique to the NSSP. For example, the required essay must be on a topic that the applicant chooses and considers to be of interest to the nominating committee as an NSSP applicant, and the State nominating committee must determine the degree that the references chosen by the applicant reflect the applicant's qualifications for a National Science Scholarship. Because of these unique requirements, the Secretary does not believe that it is possible for an applicant to apply on a combined application or apply for another program and be considered for this program.

Changes: None.

Comment: One commenter thought that the requirement in Sec. 652.21(c) that State nominating committees establish written procedures to resolve potential conflicts of interest would be burdensome to develop. Another

commenter requested clarification of the requirement that these administrative procedures be written procedures because it was only stated in the preamble, and not in the regulations.

Discussion: The Secretary believes it is imperative that clear guidelines be established to prevent conflicts of interest from arising. Written procedures that establish requirements for resolution of conflicts of interest before a committee evaluates applications assure that all members have a mutual understanding of what the committee determines to be conflicts of interest and how the committee determines to resolve such conflicts. Written procedures covering conflicts of interest should leave little doubt among members of what constitutes such conflicts and prevent misunderstandings. Each State nominating committee has the sole responsibility to determine what constitutes a conflict of interest and to establish the guidelines to resolve a conflict.

Changes: The Secretary modifies Sec. 652.21(c) to include the establishment of written administrative procedures.

Comment: One commenter suggested that the committee meet in a single joint meeting to review the applications and agree upon the nominees. This commenter suggested that applications be sent to committee members at their homes or businesses for review before the committee meets. Another commenter indicated that it was sometimes impossible for all members of a State nominating committee to meet at the same time and, even when all members could meet, it was impossible for all committee members to evaluate every National Science Scholars Program applicant. The commenter argued that State nominating committees should be given the authority to form subcommittees that could meet at different times, different locations, and even review different applications.

Discussion: In reviewing applications, the State nominating committee is responsible under Sec. 652.21(c)(1) for the establishment of written internal administrative procedures for the timely submission, processing, and review of applications submitted by eligible students. The committee must as a group make the selection of nominees for the NSSP and should, in developing these procedures, consider that the purpose of establishing a broad-based committee is to bring the varying perspectives of its members to the evaluation of each application. However, the Secretary allows the committee to determine how best to fulfill the responsibilities of the committee to provide such a broad-based review of each applicant.

Changes: None.

Section 652.30 How are Scholars Nominated?

Comment: Several comments were received concerning the requirement in the proposed regulations that at least half of the nominees be female. One commenter requested clarification on the requirement that at least one-half of the nominees from a congressional district be female. The commenter stated that in the selection process for fiscal year 1991 there had been some question concerning the meaning of this requirement. Several commenters indicated that the regulations should require that exactly half of the nominees from a congressional district be female. Another commenter believed that the requirement should be eliminated. One commenter questioned why the Secretary left the requirement in the regulations because of the reference in the preamble of the proposed regulations to the President's proposal to eliminate this requirement as part of the reauthorization of the HEA.

Discussion: Section 603(b)(2) of the Act requires that at least one-half of the Scholars nominated from a congressional district be female. The Secretary does not have the authority to modify this requirement. The term "at least" means that it is possible for more than half of all nominees from a congressional district to be female. However, it is not possible for less than half to be female. For example, a nominating committee submits four nominees from each congressional district. The top four applicants in one district were female; therefore, all nominees from that district are female. In another congressional district the top four applicants are males, and the fifth and sixth top ranking applicants were female. The top two ranking males are selected, and the next two males are passed over for two females.

The President has proposed to eliminate the statutory requirement that at least half of the nominees and selected Scholars be female when the HEA is reauthorized. This part of the preamble was intended to inform the public of the President's intent to propose changes to a statutory requirement, not to indicate that the requirement had already been changed.

Changes: None.

Comment: One commenter asked if nominees were selected from the congressional district in which they lived or from the congressional district where they attended school.

Discussion: Section 652.30(d) of the proposed regulations states, "Each State nominating committee shall submit to the President the nominations of at least four applicants legally residing in each congressional district in the State . . ."

Changes: None.

Section 652.32 What Selection Criteria Shall the State Nominating Committee Use?

Comment: A commenter expressed concerns about the number of applications that the State nominating committee would have to review unless the State could place a limit on the number of applicants who could apply. Others asked if States could screen applications for the committee, have high schools limit the number of applicants from their schools, or establish additional eligibility or selection criteria.

Discussion: Under Subpart C of the regulations, a State's responsibility is limited to establishing a State nominating committee, requiring the nominating committee to establish operating procedures, and maintaining applications and written procedures relating to the selection of nominees for a scholarship. A State does not have the authority to screen applications; further, neither a State nor a State nominating committee has the authority either to limit the number of applicants or to have high schools review eligible applications and make preselections for the committee.

The State's nominating committee is charged with developing operating procedures governing the scholarship nomination process, evaluating applications according to the

selection criteria, and providing information on each nominee to the Secretary. The State nominating committee may not delegate its functions to others, directly limit the number of applicants, or establish additional eligibility or selection criteria in its operating procedures. However, the State nominating committee, under Sec. 652.2(c) of the eligibility criteria in the NPRM, determines whether applicants have "demonstrated outstanding academic achievement in secondary school in the physical, life, or computer science, mathematics, or engineering." Thus, the State nominating committee may establish the level of academic performance, such as grade point averages, test scores, or both, that establishes "demonstrated outstanding achievement." Upon the request of a State nominating committee, a State agency may review applications on behalf of the State nominating committee to determine eligibility before forwarding them to the State nominating committee for evaluation. The State nominating committee would then need to verify the State agency's determinations of eligibility.

Changes: None.

Comment: Several commenters suggested the adoption of selection criteria to give stronger consideration to individuals who are economically disadvantaged, disabled, or from minority groups. These commenters argued that simply to promote the participation of these individuals in the program was not enough. One commenter recommended providing additional points to the selection criteria that could be added to an applicant's score if the applicant came from one of these backgrounds. Another suggested that financial need not be considered in the selection criteria but at the point when a Scholar enters an institution of higher education. This commenter believed that the amount of the scholarship should be decreased for those Scholars who demonstrated little financial need when entering the institution.

Discussion: Although the Secretary received comments that supported providing special consideration to those in financial need, commenters did not provide recommendations on how financial need could be considered during the application evaluation process, which falls outside the normal financial aid application timeframe. Under the Act the President must select Scholars by January 1 of their senior year in high school, which is also generally the earliest date on which students may submit applications for student financial assistance. It is the Secretary's view that, because of the incompatibility of the timeframes for the NSSP and the submission of a financial aid application, there is no feasible means of incorporating consideration of financial need into the application process.

While the Act in section 603(a)(1) provides for the promotion of the NSSP among individuals with disabilities or who are minorities, this provision is not one of the purposes of the NSSP as provided into section 601 of the Act. The Secretary believes that, if the program is promoted among minorities and the handicapped, outstanding individuals among these groups can successfully compete for an NSSP scholarship on their own merit without additional considerations.

The statute does not provide for an adjustment to the amount of a Scholar's award based upon financial need, i.e., the difference between the cost of attendance at the Scholar's institution and the amount his or her family can reasonably expect to contribute toward meeting that cost. However, section 605(b) of the Act provides that a Scholar's award may not exceed his or her cost of attendance as defined in section 472 of the HEA.

Changes: None.

Comment: One commenter recommended and provided an extensive grading system to be used within the different parts of the selection criteria so that the selection process would be standardized.

Discussion: The Secretary does not believe it would be appropriate to codify grading or scoring systems within the selection criteria. It is the Secretary's belief that a State nominating committee should have some discretion in applying the selection criteria to NSSP applications within the State. However, the State nominating committee must carefully review the selection criteria and the purpose for which the criteria were developed before evaluating NSSP applicants. The State nominating committee must then consistently evaluate each application based on the selection criteria.

Changes: None.

Section 652.42 What are the Requirements for a Scholar to Continue to Receive Scholarship Payments Under the NSSP?

Comment: One commenter proposed to incorporate satisfactory progress standards used for the title IV, HEA programs into the regulations.

Discussion: Section 604(b)(1) of the Act requires that a Scholar maintain a high level of academic achievement to continue to receive a scholarship. Satisfactory progress standards for title IV, HEA programs only require that a student be making progress toward graduation, not that the progress show a high level of achievement.

Changes: None.

Section 652.43 What are the Consequences of a Scholar's Noncompliance With the Scholarship Eligibility Requirements in Sec. 652.40 or Sec. 652.42?

Comments: Some commenters wanted provisions added to the regulations that allow a Scholar to postpone an initial award if the Scholar does not intend to begin studying at his or her institution of higher education in the fall after his or her senior year in high school.

Discussion: The regulations allow a Scholar's institution of higher education to suspend a Scholar's eligibility for a scholarship if the Scholar does not meet the requirements in Sec. 652.40 and Sec. 652.42. If a Scholar is not enrolling at an institution of higher education in the initial award year, the Scholar could request that his or her institution of higher education suspend the NSSP scholarship because he or she did not meet all the requirement in Sec. 652.40. If the Scholar's institution agrees to suspend the award, the institution may consider reinstating the NSSP scholarship under Sec. 652.44 as long as the suspension is no longer than 12 months and the Scholar meets the eligibility requirements in Sec. 652.40. In exceptional circumstances as determined by the institution, the period of suspension may be greater than 12 months.

Changes: None.

Comment: One commenter contended that the provision under Sec. 652.43(c) that requires proration of the NSSP scholarship payment for part-time attendance could cause undue hardship on handicapped students who, because of their handicap, could only attend college part-time. The commenter felt that full scholarship payment should be provided in these instances because the student might not otherwise be able financially to cover the total costs of education and would therefore not be able to participate in the NSSP.

Discussion: In section 602(b) of the Act the Secretary is authorized to pay an initial scholarship for a period of one academic year for the first year of undergraduate study, and additional scholarships for not more than three academic years of undergraduate study except in the case of a student who enrolls in an undergraduate course of study that requires attendance for five academic years, in which case the student could receive four additional scholarships. The Secretary in Sec. 652.43(c) of the NPRM proposed the requirement that the institution of higher education which the Scholar attends prorate the scholarship amount for less than full-time attendance in order to assure that NSSP funds are available to the Scholar throughout the period of his or her undergraduate enrollment. For example, if a Scholar attends as a half-time student during the first two academic years he or she is enrolled, the Scholar would have used only one year of scholarship eligibility. This is because he or she used only one-half of a year of eligibility in each of those years. If the Scholar is enrolled in a four-year degree program, he or she has three years of eligibility remaining. The Secretary believes that in the case of a student with disabilities, scholarships should be prorated. Otherwise, the disabled Scholar would not have NSSP funds available throughout his or her baccalaureate program of study and would suffer a much greater hardship.

Changes: None.

Section 652.50 What Institutional Agreement is Required?

Comment: A commenter inquired if there were any circumstances where an institution might refuse to participate given the extensive administrative requirements imposed on institutions with NSSP Scholars. The commenter also asked if the Secretary could provide administrative relief if an institution needed to establish the program for one NSSP Scholar.

Discussion: Under section 603(d) of the Act, the Secretary must disburse scholarship proceeds to the Scholar's institution of higher education on behalf of the Scholar. The regulations were developed to align the program closely with other financial aid program administrative requirements. The Secretary, therefore, does not believe that the administrative requirements of the program create extensive new administrative requirements that institutions do not handle routinely.

An institution is not required to complete the institutional agreement. However, if an institution refuses to complete an agreement with the Secretary, an NSSP Scholar will be unable to receive the scholarship at that institution. Further, if the Scholar's institution refuses to complete the agreement in the Scholar's first year of undergraduate study at an institution of higher education, the Scholar becomes ineligible for continuation awards.

Changes: None.

Section 652.51 How are Scholarships to be Administered by Institutions of Higher Education?

Comment: One commenter inquired about instances when a Scholar takes courses at other institutions that apply toward the Scholar's baccalaureate degree and asked for provision for written agreements between institutions to assist these Scholars in paying the cost of these courses.

Discussion: The Secretary accepts the comment.

Changes: An additional provision is added at Sec. 652.51(d) to allow for written agreements between institutions in accordance with the requirements for other Federal student assistance programs.

Comment: One commenter requested that the Secretary clarify how NSSP awards should be treated in conjunction with title IV funds.

Discussion: Section 605(b) of the Act provides that an NSSP scholarship cannot be reduced on the basis of receipt of other forms of Federal student financial assistance but must be taken into consideration when determining the Scholar's eligibility for those other forms of assistance. The scholarship is considered as a "resource" for the campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant) programs in accordance with 34 CFR 674.14, 675.14, and 676.14 and as "estimated financial assistance" for the Guaranteed Student Loan (Stafford Loan, Supplemental Loans for Students, and PLUS) programs in accordance with 34 CFR 682.206. An institution of higher education must reduce a Scholar's Pell Grant if the NSSP scholarship plus the Pell Grant exceeds the Scholar's cost of attendance under section 472 of the HEA.

Changes: None.

Section 652.52 How are Scholarship Awards to be Made and Scholarship Proceeds Returned and Transferred?

Comment: One commenter requested clarification of the provision in Sec. 652.52(a) that requires an institution to provide scholarship proceeds to a Scholar in at least two payments. The commenter asked if the institution's disbursements could be in unequal payments when unequal costs were incurred in different payment periods. The commenter also wanted to know how unequal disbursements, if allowed, would affect Sec. 652.52(d) that requires prorations of the scholarship amount if a Scholar becomes ineligible for any part of an NSSP scholarship.

Discussion: If a scholar incurred unequal educational costs in two different payment periods, the institution is not prevented from providing funds in unequal amounts to assist the Scholar in covering those costs. In this instance, the institution would base the prorated amount of the refund on the amount disbursed during that payment period and the portion of the time in the payment period that the Scholar was eligible to receive the award.

Changes: None.

Comment: A commenter requested clarification concerning whether an institution had to monitor the classroom attendance of an NSSP scholar to determine if the

Secretary was due a refund under Sec. 652.52. The commenter felt that if monitoring classroom attendance was required it was unduly burdensome because most institutions do not keep these types of records. In addition, two commenters objected to the requirement in Sec. 652.52(c) that an institution prorate that portion of the NSSP scholarship award for any part of the academic period that a Scholar fails to complete. The commenters stated that the prorating of the scholarship proceeds is different from the title IV, HEA refund and repayment requirements and creates an additional administrative hardship that would be eliminated if the Secretary were consistent with other programs. One of these commenters requested that the Secretary allow some institutional discretion in prorating an NSSP scholarship if a Scholar withdraws for medical reasons.

Discussion: It is the responsibility of an institution of higher education to determine whether a Scholar is eligible for a scholarship before providing NSSP funds to that individual. An institution must be able to determine whether a Scholar attended class and the last date of attendance for a Scholar who ceases to attend. This determination can be made by course records, records of the last examinations taken by a Scholar, or other institutional records that determine the Scholar's last date of enrollment.

The Secretary recognizes that the pro rata requirement for the NSSP differs from those requirements governing the Title IV, HEA programs. However, the NSSP is not a Title IV program, and this requirement is consistent with other Federal programs administered by the Department of Education. In addition, the number of individuals receiving NSSP scholarships at any one time is limited, and the number of instances in which an institution would have to prorate a scholarship and make a refund, therefore, would not create an undue administrative burden on institutions. The Secretary does not believe there is a need for institutional discretion in determining whether an institution should prorate an NSSP award; proration is sufficient and provides for the best use of Federal funds.

Changes: None.

Comment: One commenter asked if it is the intent of the Secretary in Sec. 652.52(c), which cross-referenced 34 CFR 690.79, Recovery of overpayments, to make Scholars who received NSSP overpayments ineligible for title IV assistance until resolution of the overpayment, as required in Sec. 690.79(c). Another commenter believed that the overpayment provisions in Sec. 652.52(c) were too stringent.

Discussion: It is the Secretary's duty to administer properly Federal programs and conserve the funds appropriated for these programs. One of the tools available to the Secretary to promote repayment in instances of overpayment is withholding additional program funds or funds from other programs.

Changes: None.

Comment: A commenter noted that the NPRM did not provide guidance to institutions in cases where a Scholar might transfer to another institution of higher education during an award year. The commenter inquired if the NSSP scholarship could be transferred.

Discussion: A scholar may transfer his or her scholarship to another institution of higher education during an award year. If the Scholar transfers during an award year, the Scholar would be eligible to continue to receive the remainder of the scholarship at the new institution as long as the new institution determined the Scholar met the provisions under Secs. 652.40 and 652.42. If a Scholar transfers between award years, the institution reports information about the Scholar's transfer in its annual performance report. The Scholar's new institution then determines if the Scholar is eligible for a continuation award.

Changes: The Secretary adds Sec. 652.52(e) which provides the procedures for institutions to follow if a Scholar transfers from one institution to another during an award year.

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A—General

Supplementary Information and Analysis of Comments and Changes

Authority: 20 U.S.C. 1104-1104k, unless otherwise noted.

Subpart A—General

Sec. 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes grants to the States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104)

Sec. 653.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §653.41 are eligible to be selected for scholarships under this program.

(Authority: 20 U.S.C. 1104 and 1104b)

Sec. 653.3 What kind of activity may be assisted?

A State may use its funds under this program, including principal and interest payments it receives from scholars under §653.62, only for making scholarship payments to scholars.

(Authority: 20 U.S.C. 1104)

Sec. 653.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 653.

(Authority: 20 U.S.C. 1104 et. seq.)

Sec. 653.5 What definitions apply?

(a) Definitions in the HEA.

(1) The following term used in this part is defined in section 472 of the HEA:

Cost of attendance

(2) The following term used in this part is defined in section 1201(a) of the HEA:

Institution of higher education

(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Local educational agency (LEA)
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency (SEA)

(c) Other definitions. The following definitions also apply to this part:

Academic year means a period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one of the following:

(i) Two semesters.

(ii) Two trimesters.

(iii) Three quarters.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Federally approved teacher shortage areas means areas that are—

(i)(A) Geographic regions in a State in which there are shortages of elementary or secondary school teachers; or

(B) Specific grade levels or academic, instructional, subject matter, or discipline classifications in which there are statewide shortages of elementary or secondary school teachers; and

(ii) Designated by the Secretary in accordance with 34 CFR 682.210(j)(6) or (7), except that the Secretary gives special consideration to areas—

(A) In which emergency certification of individuals is being used to correct teacher shortages; and

(B) In States that have retirement laws permitting early retirement.

Full-time student means a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Geographically isolated area means an area that lacks close economic and social relationships with an urbanized area, as defined by the Bureau of the Census, that is not easily accessible by public transportation.

Group historically underrepresented in teaching means a group of individuals whose representation among teachers in the State is proportionately less than its representation among the general population in the State, as determined by the State, over a significant period of time.

HEA means the Higher Education Act of 1965, as amended.

Inner city means the central or most densely populated region within an incorporated city that has a population of 50,000 or more.

Limited English proficient students means students—

(i)(A) Who were not born in the United States;

(B) Whose parents normally use a language other than English;

(C) Who come from environments in which a language other than English is dominant; or

(D) Who are American Indian and Alaskan Natives and come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(ii) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these students the opportunity to learn successfully in classrooms in which English is the language of instruction, or to participate fully in society.

Participating State means a State that has submitted a grant application that has been approved by the Secretary under this program.

Preschool-age children means children who are younger than the age at which their State of residence provides elementary education.

Present and projected teacher shortage and surplus areas means present and projected teacher shortage and

surplus areas in a State, as determined by the State on the basis of the demand for and supply of qualified early childhood, elementary, and secondary teachers in the State and the demand for and supply of teachers with training in specific academic disciplines.

Principal means a school principal or the principal's designee.

Related services has the meaning given that term in section 602(a)(17) of the Individuals with Disabilities Education Act.

Rural means any area that is outside an urbanized area, as defined by the Bureau of the Census, and outside any place, incorporated or Bureau of the Census designated, having a population of 2,500 or more.

Scholar means an individual who is selected as a Paul Douglas Teacher Scholar.

Scholarship means an award made to a scholar under this part.

School-age population means the population ages 5 to 17.

Students from low-income backgrounds means students from families whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census of the U.S. Department of Commerce.

Students with disabilities has the meaning given the term "children with disabilities" in section 602(a)(1) of the Individuals with Disabilities Education Act.

Students who are from disadvantaged backgrounds means students—

(i) From low-income backgrounds;

(ii) Who are ethnic or racial minorities; or

(iii) With disabilities.

Teach on a full-time basis means teach the same number of hours required of teachers who have full-time contracts, as determined by the institution or agency in which an individual is teaching, for a minimum of one academic term, as defined by the institution or agency in which an individual is teaching.

(Authority: 20 U.S.C. 1104 et seq., 1141)

Subpart B—How Does a State Apply for a Grant?

Sec. 653.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit an application to the Secretary—for review and approval—by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial grant application for fiscal year 1993 or thereafter, a State need not submit new applications to be considered for funding under this program in subsequent years, except that any changes in the State's program must be incorporated in a revised application which must be submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1104b)

Sec. 653.11 What is the content of a grant application?

A State's grant application must—

(a) Identify—

(1) The State agency responsible for administering this program (SA), which must be—

(i) The State agency that administers the State Student Incentive Grants Program under title IV, part A, subpart 4 of the HEA;

(ii) The State agency that administers the Federal Family Education Loan Program and with which the Secretary has an agreement under section 428(b) of the HEA; or

(iii) Any other appropriate State agency approved by the Secretary; and

(2) The composition of the selection panel responsible for selecting scholars under this program, which must be—

(i)(A) A seven-member statewide panel appointed by the chief State elected official acting in consultation with the State education agency (SEA); or

(B) An existing grant agency or panel designated by the chief State elected official and approved by the Secretary; and

(ii) Representative of school administrators, teachers, including preschool and special education teachers, and parents;

(b) Describe a program of activities for carrying out the purposes of this program in accordance with the requirements of this part, including—

(1) The criteria and procedures the selection panel plans to use to select eligible scholars, including an explanation of how the criteria and procedures meet the requirements of §653.42; and

(2) The criteria and procedures the SA plans to use to—

(i) Publicize the availability of scholarships to secondary school students in the State;

(ii) Notify scholars of their selection; and

(iii) Inform scholars annually, on disbursement of the scholarship funds, of—

(A) The State's present and projected teacher shortage and surplus areas; and

(B) The federally approved teacher shortage areas within the State;

(iv) Monitor the continuing eligibility of scholars;

(v) Disburse scholarship funds;

(vi) Collect funds improperly disbursed;

(vii) Monitor scholars' compliance with the teaching obligation requirements; and

(viii) Administer the repayment provisions under §653.62;

(c) Provide a copy of—

(1) The scholarship application form, which must disclose the terms and conditions of the scholarship agreement; and

(2) The scholarship agreement form, containing the terms and conditions provided in §653.50; and

(d) Provide assurances that—

(1) The selection panel—

(i) Is representative of administrators, teachers (including preschool and special education teachers), and parents, as required by paragraph (a)(2)(ii) of this section; and

(ii) Will select scholars who are eligible under §653.41; and

(2) The SA will—

(i) Comply with the criteria and procedures described in the State's approved grant application;

(ii) Submit for the Secretary's prior written approval any changes in the criteria and procedures described in its approved grant application;

(iii) Make particular efforts to attract students from low-income backgrounds, ethnic and racial minority students, students with disabilities, students from groups historically underrepresented in teaching, students who express a willingness or desire to teach in rural schools, urban schools, or schools having less than average academic results or serving large numbers of economically disadvantaged students, or women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields;

(iv) Disburse no scholarship funds to scholars who do not meet the requirements of §653.51;

(v) Expend the funds it receives under this program only as provided in §653.3;

(vi) Cooperate with the Secretary in any evaluation of its project; and

(vii) Provide the Secretary with any program information or reports required by the Secretary.

(Authority: 20 U.S.C. 1104b, 1104d, 1104i)

Subpart C—How Does the Secretary Make a Grant to a State?

Sec. 653.20 How does the Secretary approve a grant application?

The Secretary approves a grant application if it contains all of the information and assurances required in §653.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1104b)

Sec. 653.21 How does the Secretary determine the amount of a grant to a State?

From the funds appropriated for this program, the Secretary determines the amount of the grant to each participating State on the basis of the ratio of the school-age population in that State compared to the school-age population in all participating States. The Secretary determines the number of persons in a State on the basis of the most recently available data from the Bureau of the Census.

(Authority: 20 U.S.C. 1104a)

Subpart D—How Does a Student Apply for a Scholarship?

Sec. 653.30 What must a student do to apply for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SA in the student's State of legal residence.

(Authority: 20 U.S.C. 1104d)

Sec. 653.31 Where does a student obtain an application?

The SEA shall make applications available to high schools in the State and in other locations convenient to students, parents, and other interested parties.

(Authority: 20 U.S.C. 1104d)

Subpart E—How Does a State Select Scholars?

Sec. 653.40 How does the selection panel select scholars?

The selection panel identified by a State in its grant application, as provided in §653.11(a)(2), shall select scholars from among students who meet the eligibility criteria in §653.41 on the basis of selection criteria and procedures developed in accordance with §653.42.

(Authority: 20 U.S.C. 1104d)

Sec. 653.41 Who is eligible to be selected as a scholar?

A student is eligible to be selected as a scholar under this program only if he or she—

(a)(1) Is a United States citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen, or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(b)(1) Has graduated from secondary school;

(2) Is scheduled to graduate from secondary school by the end of the school term in which the award is made; or

(3) Has received a certificate of high school equivalency for successfully completing the General Educational Development (GED) test;

(c)(1) Ranks in the top 10 percent of his or her graduating class; or

(2) Has received GED test scores that the State recognizes as equivalent to ranking in the top 10 percent of the secondary school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made;

(d) Is not ineligible to receive assistance as a result of default on a Federal student loan or otherwise, as provided under 34 CFR 75.60-75.62; and

(e) Intends to pursue a teaching career at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104, 1104d)

Sec. 653.42 What are the selection criteria and procedures?

(a) The SEA shall develop the selection criteria and procedures in cooperation with the State higher education agency and in consideration of the views of local educational agencies (LEAs), private educational institutions, and other interested parties.

(b)(1) The State shall solicit the views of LEAs, private educational institutions, and other interested parties by—

(i) Written comments; and

(ii) Publication of proposed selection criteria and procedures prior to implementation.

(2) The State may also solicit views by—

(i) Public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with specific preparation); or

(ii) Other methods, provided that the SEA documents these methods and the views obtained through these methods.

(c) The selection criteria and procedures developed in accordance with paragraphs (a) and (b) of this section must be designed to—

(1) Ensure that scholars meet the eligibility requirements in §653.41;

(2) Address the present and projected teacher shortage areas of the State;

(3) Select scholars without regard to whether they plan to attend publicly or privately controlled institutions; and

(4)(i) Select at least 75 percent of the scholars on the basis of selection criteria that include criteria to give special consideration to students who—

(A) Intend to teach or provide related services to students with disabilities;

(B) Intend to teach limited English proficient students;

(C) Intend to teach preschool-age children;

(D) Intend to teach in schools serving inner city, rural, or geographically isolated areas;

(E) Intend to teach in curricular areas or geographic areas that are present teacher shortage areas; or

(F) Are from disadvantaged backgrounds and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach; and

(ii) Select the remaining scholars on the basis of the same selection criteria used to select scholars under paragraph (c)(4)(i) of this section, except that the special consideration criteria may be excluded.

(Authority: 20 U.S.C. 1104b, 1104d)

Subpart F—What are the Scholarship Conditions?

Sec. 653.50 What agreement must a scholar have with the State Agency?

(a) To receive scholarship funds, a scholar must enter into an agreement with the SA under which he or she agrees to—

(1) Pursue a course of study leading to certification as a teacher at the preschool, elementary, or secondary level;

(2) Teach on a full-time basis for a period of not less than—

(i) Two years for each year for which scholarship assistance is received in a public or private nonprofit preschool, elementary school, or secondary school in any State, including a private nonprofit school that serves

students with disabilities or limited English proficient students; or

(ii) One year for each year for which scholarship assistance is received in a federally approved teacher shortage area;

(3) Fulfill the teaching obligation described in paragraph (a)(2) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(4) Provide the SA with the evidence of compliance with paragraph (a)(2) of this section that is required under §653.61, and with evidence of compliance with paragraphs (a)(1) and (3) of this section and §653.51(a) as required by the SA.

(5) Repay all or part of the scholarship plus interest and reasonable collection fees, if applicable, as specified in §653.62, if the SA determines that the conditions of paragraph (a)(1), (2), or (3) of this section are not met; and

(6) Provide scholarship information, as requested by the Secretary, for an evaluation of this program.

(b) The agreement must include a description of the procedures under which—

(1) The provisions of §653.62(g) through (k) will be implemented; and

(2) A scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1104b)

Sec. 653.51 What are the requirements for a scholar to receive scholarship payments?

(a) Except as provided in paragraph (b) of this section, the SA shall disburse $5,000 per academic year for a maximum of four academic years to each scholar who—

(1) Is selected in accordance with the criteria established under §653.42;

(2) Signs a scholarship agreement in accordance with §653.50;

(3) Is enrolled as a full-time student in an institution of higher education;

(4) Is pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the SA, but not including graduate study that is not required for initial teacher certification; and

(5) Is maintaining satisfactory progress toward a degree, or, if the student already has a degree, toward teacher certification, as determined by the institution of higher education the student is attending.

(b)(1) In no case may a student receive a scholarship under this program that exceeds the cost of attendance at the institution in which the scholar is enrolled.

(2) A scholarship awarded under this part may not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but must be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(Authority: 20 U.S.C. 1104c, 1104e)

Subpart G—What Post-Award Conditions Must Be Met by State Agencies and Scholars?

Sec. 653.60 What requirements must a State Agency meet in the administration of this program?

(a) To receive payments under this program, an SA must—

(1) Comply with the criteria, procedures, and assurances in the State's approved grant application;

(2) Disburse scholarship funds in accordance with §653.51;

(3) Collect any scholarship funds improperly disbursed;

(4) Comply with all requests from the Secretary for reports or information necessary to carry out the Secretary's functions under this part.

(5) Establish and implement policies and procedures that are necessary to administer the repayment provisions of §653.62 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(6) Except as provided in paragraph (b) of this section, expend in each award year all—

(i) Scholarship funds received from the Secretary for that award year; and

(ii) Funds received prior to that award year for principal and interest payments collected under the provisions of §653.62.

(b) After awarding all scholarships for payment during an award year, as required by paragraph (a)(6) of this section, an SA may reserve for expenditure in the following award year any remaining amount of funds that is less than the amount required for a scholarship, as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1104b, 1104f, 1104i)

Sec. 653.61 How does a scholar fulfill the teaching obligation under this program?

(a) To fulfill the teaching obligation required under §653.50(a)(2), a scholar must provide to the SA in the State from which he or she received scholarship funds a statement from the principal of the public or nonprofit private preschool, elementary, or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher.

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(b) To qualify for a reduction in the teaching obligation for teaching in a federally approved shortage area, as provided under §653.50(a)(2)(ii)—

(1) A scholar who is teaching in the same State from which he or she received scholarship funds must provide to the SA in that State a statement certifying that the scholar is teaching in a federally approved teacher shortage area, as determined by the SA; and

(2) A scholar who is teaching in a State other than the one from which he or she received scholarship funds must do one of the following:

(i) If the scholar is teaching in a State in which the chief State school officer has complied with paragraph (c) of this section and provides an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's principal.

(ii) If a scholar is teaching in a State in which the chief State school officer has not complied with paragraph (c) of this section or does not provide an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar must obtain certification that he or she is teaching in a teacher shortage area from the chief State school officer for the State in which the scholar is teaching.

(c) For a scholar to obtain a certification under paragraph (b)(2)(i) of this section, the State's chief state school officer must previously have notified the Secretary, by means of a one-time written assurance, that he or she provides annually a listing of the federally approved teacher shortage areas to the principals in the State whose schools are affected.

(d) If a scholar who receives a reduction in his or her teaching obligation continues to teach in the same area in which he or she was teaching when the teaching obligation was originally reduced, the scholar continues to qualify for the reduction in the teaching obligation even if the area ceases to be designated a teacher shortage area on the federally approved list, provided that the scholar provides the SA with a statement from the principal of the school in which he or she is teaching, certifying that the scholar continues to be employed as a full-time teacher in the same area in which he or she was teaching when the teaching obligation was originally reduced.

(Authority: 20 U.S.C. 1104b, 1104j)

Sec. 653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

(a) A scholar found by an SA to be in noncompliance with the agreement entered into under §653.50 shall—

(1) Repay the amount of scholarship funds received, prorated according to the fraction of the teaching obligation not completed, as determined by the SA in accordance with paragraph (b) of this section;

(2) Pay a simple, per annum interest charge on the outstanding principal, as determined by the SA in accordance with paragraph (c) of this section; and

(3) Pay all reasonable collection costs as determined by the SA, in accordance with 34 CFR part 682.

(b) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed since the scholar was enrolled full-time in a course of study;

(ii) The date the scholar informs the SA that he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the SA; and

(2) Make monthly or quarterly payments to the SA that—

(i) Cover principal, interest, and collection costs according to a schedule established by the SA that calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the SA's satisfaction.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the SA has determined that the scholar—

(i) Is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(ii) Completed a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but never taught; or

(2) The day after the last day of the scholarship period for which the teaching obligation has been fulfilled.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (title IV, part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS

Programs (sections 428A and 428B of the HEA, respectively) as published annually in the **Federal Register**.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (d)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (d)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(e) The SA may not require a scholar to make repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (b)(2) of this section.

(f) The SA shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (b) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States, or serving as a member of VISTA or the Peace Corps, for a period not in excess of three years;

(3) Temporarily totally disabled, as established by the sworn affidavit of a qualified physician, for a period not in excess of three years;

(4) Unable to secure employment by reason of the care required by a disabled child, spouse, or parent for a period not in excess of twelve months;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the SA under paragraph (b)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar must notify the SA of his or her claim to the exception and provide supporting documentation as required by the SA.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he of she need not make the scholarship repayments required by paragraph (b) of this section and interest does not accrue.

(j) The SA shall extend the ten-year scholarship repayment period established under paragraph (b) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the SA's satisfaction.

(k) The SA shall cancel a scholar's repayment obligation if it determines that—

(1) The scholar is unable to teach on a full-time basis because he or she is permanently totally disabled, on the basis of a sworn affidavit of a qualified physician; or

(2) The scholar has died, on the basis of a death certificate or other evidence conclusive under State law.

(Authority: 20 U.S.C. 1104f, 1104g)

[FR Doc. 93-19264 Filed 8-10-93; 8:45 am]

Note: Part 653 amended August 11, 1993, effective September 25, 1993.

Auguat 11, 1993 Federal Register Supplementary Information and Analysia and Changes.

Summary: The Secretary amends the regulations governing the Paul Douglas Teacher Scholarship Program, which is authorized by title V, part C (formerly part D), subpart 1 of the Higher Education Act of 1965, as amended (HEA). These final regulations are needed to implement changes made by the Higher Education Amendments of 1992 (Pub. L. 102-325) (1992 Amendments), enacted July 23, 1992, and to make other changes to improve administration and management of the program. The regulations establish eligibility criteria, selection criteria, and other terms and conditions for making grants to States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

Supplementary Information: The Paul Douglas Teacher Scholarship Program supports the National Education Goals. By encouraging and enabling outstanding students to become teachers, the program will improve the quality of education, thereby furthering Goal 3, which calls for American students to leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, and Goal 4, which calls for U.S. students to be first in the world in science and mathematics achievement. In addition, by encouraging and enabling students to pursue postsecondary education, the program furthers Goal 5, which calls for every adult American to be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Regiater** (58 FR 28530). The major issues addressed by the NPRM are discussed in the preamble to the NPRM. The major differences between the NPRM and the final regulations

are discussed below in the Analysis of Comments and Changes.

Analysis of Comments and Changes

Seven commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and other changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§653.3)

Comment: Several commenters requested that the regulations be revised the permit States to use Federal funds received under this program to cover administrative expenses incurred in operating the program.

Discussion: The statute does not authorize the Secretary to provide for administrative expenses, and administrative expenses have not been covered under this program in the past. The Secretary does not believe it is appropriate to reduce the funds available for scholarships in order to cover State administrative expenses.

Changes: None.

Students Who Are From Disadvantaged Backgrounds(§653.5)

Comments: One commenter recommended that the definition of this term be revised to remove the reference to students from low-income backgrounds because that group is not specifically identified as disadvantaged by the statute and because income information is not currently collected on the application for a scholarship under this program. The commenter further recommended that the definition be revised to include any student who identifies herself or himself as disadvantaged on the scholarship application.

Discussion: Students from low-income backgrounds are identified by section 523 (b)(9) of the statute as a group that the State agency must make particular efforts to attract to this program. Accordingly, the Secretary believes it is consistent with legislative intent to include those students in the definition of students who are disadvantaged for the purposes of receiving special consideration in the selection criteria. The Secretary does not believe it is appropriate to give special consideration to any student who self-identifies as disadvantaged on the basis of no particular criteria or definition.

Changes: None

Teach on a Full-time Basis (§653.5)

Comment: Two commenters suggested modifying the definition of this term to eliminate the one academic term minimum so that part-time teachers could be given pro-rated credit.

Discussion: The Secretary believes the proposed definition of this term made a reasonable accommodation to the realities of the teaching job market by providing pro-rated credit to teachers who teach full time for a minimum of one academic term. The Secretary declines to modify the definitions as suggested because awarding pro-rated credit for any time period of part-time teaching, no matter how small, would require extensive tracking and administration in order to implement the repayment and interest requirements under this program. The Secretary believes this would impose too great an administrative burden on States, particularly since States are not reimbursed for administrative expenses under this program.

Changes: None

Course of Study Leading to Teacher Certification (§§653.5 and 653.50(a)(1))

Comment: One commenter recommended adding a definition of this term to clarify that it includes any four-year collegiate academic program as long as students certify that they will pursue teacher certification immediately following graduation.

Discussion: The Secretary agrees that the term, as used in the eligibility requirements in §653.50(a)(1), could include any four-year collegiate academic program that met a State's teacher certification requirements. The Secretary believes the scholarship agreement provisions in §653.50 of the regulations are clear and does not believe a definition of the term is necessary.

Changes: None

Teacher Shortage Areas (§653.11(b)(2)(iii)(A))

Comment: Several commenters requested that the regulations be revised to limit the requirement that States notify scholars of their present and projected teacher shortage and surplus areas to require notification only to the extent that those areas are "known" by the State agency. The commenters stated that the information is not readily available to the agency that administers this program in all States.

Discussion: The requirement that States describe in their applications how they will inform recipients of present and projected teacher shortage and surplus areas within the State is taken from section 523(b)(4) of the statute. The Secretary does not believe it would be consistent with the statute or legislative intent to limit this requirement by adding the qualification "if known." Moreover, the Secretary believes it is important for scholarship recipients to have all of this information in order to make informed choices about their course of study.

Changes: None

Selection Panel Representation Requirement (§653.11(d))

Comment: Some commenters recommended that the requirement in the regulations that selection panels be representative of school administrators, teachers, including preschool and special education teachers, and parents be limited to 7-member statewide panels and not be imposed on existing grant agencies or panels that are designated to select scholars under this program. Commenters pointed out that the representation requirements in the statute refers only to the statewide panels. One commenter stated that one panel member should be permitted to satisfy more than one of the representation requirements.

Discussion: The Secretary recognizes that the express language of section 525(a) of the statute requires representation in reference to "statewide panels." However, the Secretary continues to interpret this requirement to apply to all selection panels, whether they are newly appointed 7-member statewide panels or existing agencies or panels. Moreover, section 525(a) of the statute also requires that existing agencies and panels be approved by the Secretary, and the Secretary believes as a matter of policy that all selection panels should meet the representation requirements.

The Secretary agrees with the commenter that one panel member may meet more than one of the representation requirements. In addition, the Secretary believes that former teachers and school administrators can meet the representation requirements. For example, a school administrator who is a former special education teacher could meet both the requirement for representation of special education teachers and the requirement for representation of administrators.

Changes: None

Evaluation Requirements (§653.11(d)(2)(vi) and (vii))

Comments: One commenter expressed the view that requiring a State agency to assure in its application that it will cooperate with the Secretary in "any" evaluation of its project and provide "any" information or reports required by the Secretary might lead to unreasonable demands. The commenter recommended modifying these provisions be removing the word "any" and instead requiring cooperation in "an" evaluation and the provision of "program information or reports required by the Secretary."

Discussion: The evaluation requirements under this program are consistent with the requirements in the Education Department General Administrative Regulations (EDGAR) that a grantee cooperate in "any" evaluation of a program by the Secretary (34 CFR 76.591). In light of the extensive evaluation requirements in the statute, the Secretary declines to modify the evaluation requirements for applicants under this program.

Changes: None

Eligibility Requirements: Scheduled to Graduate Within Three Months (§653.41(b)(2))

Comments: One commenter stated that the requirements limiting the eligibility of secondary school students to those scheduled to graduate from secondary school within three months of the date of the award is overly restrictive and would preclude early notification. The commenter recommended revising the provision to require that the applicant be scheduled to graduate by the end of the present school term or within five months of the date of the award.

Discussion: The Secretary agrees with the commenter that the three-month period provided in the proposed regulations is unnecessarily restrictive.

Changes: Paragraph (b)(2) of §653.41 has been revised to provide that in order to be eligible a secondary school student must be scheduled to graduate by the end of the secondary school year in which the award is made.

Eligibility: Top Ten Percent Requirements (§653.41(c)(1))

Comment: Several commenters objected to the provision that limits eligibility to students who graduate in the top ten percent of their class or receive equivalent GED test scores. In particular, commenters were concerned that the ten percent requirements would eliminate from eligibility some adult candidates who are returning to college after taking time off and who were not in the top ten percent of their class during high school but would make excellent teachers for other reasons. Some commenters were also concerned that this requirement would have a discriminatory impact on minority students.

Discussion: The top ten percent requirement is taken from section 525(b) of the statute, and the Secretary does not have the authority to change the requirement in the regulations. The Secretary notes that section 523(d)(6) of the statute also requires States to target racial and ethnic minorities for special consideration for scholarships under this program, which will counter any potentially discriminatory impact of the ten percent requirement on minority students.

Changes: None

Selection Criteria: Responsibility for Developing (§653.42)

Comment: Several commenters objected to the provisions in the regulations that require the State educational agency (SEA) to develop the selection criteria. The commenters recommended that these provisions be modified to require the State agency to develop the selection criteria because the SEA is not the agency responsible for administering this program.

Discussion: The requirement in paragraph (a) of §653.42 of the regulations that the SEA develop the selection criteria in consultation with the State higher education agency is taken directly from section 523(c) of the statute. The Secretary does not have the authority to modify this requirement in the regulations. However, paragraph(b) of §653.42, which requires the SEA to solicit views of other parties in the development of the selection criteria, goes beyond the express statutory requirement that the State solicit those views. The Secretary interpreted the statutory requirement to mean the SEA because the SEA is the agency of the State that is responsible for developing the selection criteria. However, the Secretary agrees that under the statute, the state could solicit those views through other channels.

Changes: Paragraphs (b)(1) and (b)(2) of §653.42 have been revised to replace references to "SEA" with "State."

Special Consideration Requirements (§653.42(c))

Comment: A number of commenters were concerned about the special consideration requirements. A few commenters objected to the 75 percent requirement as too high. Many of the commenters wondered what happens if there are not enough eligible applicants who meet the special consideration criteria to satisfy the 75 percent requirement. Several commenters recommended that States be permitted to carry over funds that they cannot award because they do not have enough special consideration applicants.

Some commenters requested that the regulations be revised to clarify procedures for implementing the special consideration provisions. For example, one commenter

recommended that the regulations require student certifications as a basis for special consideration, and another commenter requested that the regulations clarify the 75 percent requirement applies only to new awards each year. One commenter objected to the reference in the regulations to a "two-part" selection process as overly restrictive, and recommended removing it. Another commenter wrote in favor of the two-part selection process.

Discussion: Section 525(c) of the statute authorizes the Secretary to waive the special consideration requirements for not more than 25 percent of the individuals receiving scholarships under this part. The Secretary believes the criteria for special consideration are sufficiently numerous and broad that if properly publicized, explained, and incorporated into the scholarship application, States should not have trouble attracting applicants who meet at least one of them. However, under the Education Department General Administrative Regulations (EDGAR), States may carry over funds not awarded in one award year to the following award year (34 CFR 76.705).

The Secretary does not believe it is necessary to revise the regulations to set out additional procedures for implementing the special consideration criteria. Section 653.42(c) of the regulations is clear that 75 percent of the scholars selected each year must meet the special consideration criteria. Continuing scholars do not need to be re-selected each year. The Secretary believes the certification procedure recommended by one commenter is an appropriate method for implementing the special consideration requirements, but leaves it to each State to establish its own procedures.

The Secretary agrees with the commenter that objected to the reference in the regulations to a "two-part" selection process. Although the Secretary believes a two-part selection process would be an effective method for implementing the special consideration criteria, the Secretary does not believe it is necessary to require that States establish a "two-part" process.

Changes: The term "two-part" has been removed from paragraph (c)(4) of §653.42 of the regulations.

Priority for Scholars Who Intend to Attend In-State Institutions or Teach In-State (§653.42)

Comment: A few commenters suggested that States be permitted to develop selection criteria that give priority to students who express an intent to attend an in-State institution or to teach in the State where the award is made. The commenters expressed the view that an in-State priority would be consistent with the emphasis in the statute and the regulations on addressing the present and projected teacher shortage areas of the States.

Discussion: Although an in-State priority may be a useful mechanism for reducing teacher shortage areas in a State, the Secretary believes that restricting the options of scholars, both in terms of the institution they attend and the State in which they will live and teach after they graduate, would be counter-productive to the primary purpose of the program, which is to attract outstanding secondary school graduates into teaching careers.

Changes: None

Scholarship Agreement: Teaching Obligation Period (§653.50(a)(3))

Comment: One commenter recommended that the ten-year period for scholars to meet their teaching obligation be adjusted down for scholars who receive less than four years of scholarship funds.

Discussion: The Secretary does not believe it is necessary to revise the regulations because they already contain provisions to make adjustments based on whether a scholar fulfills his or her obligations under the scholarship agreement. For example, a scholar who receives less than four years of scholarship funds because the scholar did not continue to pursue a course of study leading to teacher certification would enter repayment status six months after the scholar was no longer enrolled in such a course of study, unless the scholar filed for and received a deferment under §653.62(g). Scholars in repayment are required to pay no less than $1,200 annually, unless the State grants them a waiver under §653.62(b)(2)(ii). Accordingly, a scholar who did not continue a course of study leading to teacher certification would have less time to pay back the scholarship funds. On the other hand, scholars who do not receive four years of scholarship funds because they do not meet the other continuing eligibility criteria, such as satisfactory progress or full-time enrollment, would not be required to enter repayment status early, as long as they continued to pursue a course of study leading to teacher certification. However, if those students never teach, they will be required to pay more interest on their loan because interest will accrue from the date of the first scholarship payment under §653.62(c)(1)(ii).

Changes: None

Maintaining Satisfactory Progress (§653.51)

Comment: Several commenters recommended that the continuing eligibility criteria requiring scholars to maintain satisfactory progress be strengthened to require scholars to maintain a 3.0 grade point average. Commenters pointed out that scholars are selected based on outstanding academic performance and that students who maintain only minimum requirements for satisfactory progress may have difficulty finding teaching positions.

Discussion: The Secretary understands the commenters concerns, but declines to incorporate a 3.0 standard into the regulations. A 3.0 grade point average may be more difficult to maintain at one institution than another. The Secretary believes satisfactory progress is best determined by each institution.

Changes: None

Other Federal Student Financial Assistance (§653.51(b))

Comment: Several commenters asked for clarification of whether receipt of an award under this program can result in the reduction of a Federal Pell grant.

Discussion: Under section 524(b) of the statute, funds awarded under this program must be considered in determining eligibility for student financial assistance under Title IV of the HEA, including a Federal Pell grant. Moreover, section 524(c) requires that a scholarship under this program not be reduced on the basis of a student's receipt of other

Federal financial assistance. Taken together, these provisions call for the reduction of other forms of Federal assistance under title IV, including a Federal Pell grant, before a scholarship under this program.

Changes: None

Teacher Shortage Areas (§653.61)

Comment: Some commenters expressed the view that it is unfair to disallow a scholar the benefit of a reduced teaching obligation if the scholar pursues certification in an area that was publicized as a teacher shortage area at the time the scholar first received the scholarship, but was removed from the list before the scholar started teaching. The commenters recommended expanding the reduction benefit to include teaching in an area that was a teacher shortage area when a scholar first began seeking a teaching degree.

A few commenters also objected to the provision in the regulations that requires scholars to obtain a certification that they are teaching in a teacher shortage area from the principal in the school in which they are teaching. Those commenters suggested that the determination should be made by the State agency in reference to the federally approved list. One commenter stated that the superintendent, rather than the principal, should be the official responsible for the certification.

Discussion: Section 523(b)(5)(A) of the statute provides for a reduction in the teaching benefit for individuals who "teach" in a shortage area established by the Secretary. The Secretary does not interpret the statutory provision to include individuals who pursue certification in a teacher shortage area that is removed from the list before they ever teach. In contrast, the Secretary believes it is consistent with statutory intent to provide for continuation of the reduction benefit for individuals who teach in areas that are approved teacher shortage areas when they start teaching and are subsequently removed from the list because those individuals did "teach" in shortage areas, and they should not be penalized for their contribution to the elimination of those shortage areas.

The Secretary does not agree that the principal certification requirement should be removed from this section of the regulations because the State agency is not in a position to certify that a scholar is teaching in a particular area. The Secretary believes that the definition of principal is sufficiently broad to cover variations of responsibilities and authority in particular districts.

Changes: None.

Deferment of Repayment Status (§653.62(g))

Comment: Several commenters recommended that the deferment provisions be expanded to include deferments for Peace Corps and VISTA service so that scholars are not discouraged from serving in Federal public service programs.

Discussion: The Secretary agrees that deferment of repayment status would be appropriate during periods when individuals are participating in Federal public service programs.

Changes: Paragraph (g)(2) of §653.62 has been revised to add deferments for scholars who are serving as members of the Peace Corps or VISTA for a period not in excess of three years.

Paperwork Burden (§§653.11 and 5653.42)

Comment: Two commenters expressed the view that the paperwork burden on States exceeds the estimated average of five hours. One commenter stated that the State application preparation takes 24 hours. The other commenter stated that it averages 2 to 3 days, noting that many offices are not computerized. One commenter recommended that a survey of respondents be done to ascertain the average.

Discussion: The Secretary agrees that the average paperwork burden is likely to exceed five hours.

Changes: The estimated average paperwork burden has been increased from five to twelve hours.

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

Subpart E—How Does an SEA Select an Eligible Student to Be a Scholar?

Subpart F—How Does a Scholar Receive Scholarship Payments?

Subpart G—What Post-Award Conditions Must an SEA Meet?

Supplementary Information and Analysis of Comments and Changes

Authority: 20 U.S.C. 1070d-31 to 1070d-41, unless otherwise noted.

Subpart A—General

§654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d-31, 1070d-33)

§654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §§654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d-33, 1070d-36)

§654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under §654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d-35, 1070d-38)

§654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(Authority: 20 U.S.C. 1070d-31 et seq.)

§654.5 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) Other definitions. The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has—

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d-31 et seq., 20 U.S.C. 1088)

Subpart B—How Does a State Apply for a Grant?

§654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-35)

§654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A Description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—

(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of § 654.50; and

(6) Collect scholarship funds improperly disbursed.

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in § 654.3.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-35 to 1070d-38)

Subpart C—How Does the Secretary Make a Grant to a State?

§654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in § 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d-31 et seq.)

§654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d-34, 1070d-37)

Subpart D—How does a Student Apply to a SEA for a Scholarship?

§654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d-37)

Subpart E—How does an SEA Select an Eligible Student to be a Scholar?

§654.40 Who is an eligible student?

A Student is eligible to be selected as a scholar if he or she—

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service
that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d-36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

§654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—

(1) Who are eligible students under the criteria provided in § 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to—

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)

Subpart F—How Does a Scholar Receive Scholarship Payments?

§654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who—

(1) Is selected in accordance with the criteria established under § 654.41; and

(2) Meets the requirements for continuing eligibility under § 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d-38)

§654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—

(1) Meet the eligibility requirements in § 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full time for the first year of study. If after the first year of study the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d-33, 1070d-36)

§654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of §654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in §654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d-35, 1070d-36 to 1070d-38)

Subpart G—What Post-Award Conditions Must an SEA Meet?

§654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall—

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with §654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under §654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.

(Approved by the Office of Management and Budget under control number 1640-0612)

(Authority: 20 U.S.C. 1070d-33, 1070d-35)

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Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends the regulations governing the Robert C. Byrd Honors Scholarship Program. These amendments are needed to implement the Higher Education Amendments of 1992 and to clarify the existing regulations governing the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Robert C. Byrd Honors Scholarship Program (program) is authorized by sections 419A-419K of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992. Through this program, the Secretary provides grants to States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence and achievement. By promoting student excellence and achievement, the program supports National Education Goal 4, that U.S. students be first in the world in math and science, and Goal 5, that every adult American be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 28538). The major issues addressed by the regulations are discussed in the preamble to the NPRM. There are no major differences between the NPRM and the final regulations.

Analysis of Comments and Changes

Six commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and requests for changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§654.3)

Comment: All of the commenters objected to the elimination of the administrative cost allowance. In particular, commenters were concerned about the failure to provide an administrative cost allowance in light of the increase in State administrative burdens under this program. Some commenters specifically requested that they be permitted to use unexpended funds to cover administrative expenses.

Discussion: In the 1992 Amendments to the HEA, Congress amended the statute governing this program to remove sections 419E(5) and 419D(a)(2) to eliminate the provision for administrative expenses. At the same time, Congress expanded the scholarship period under the program from one to four years. A four-year scholarship period is inherently more burdensome on States because States must monitor the continuing eligibility of scholars for three more years. Accordingly, although the Secretary acknowledges increased State administrative burdens, the Secretary does not have authority under the statute to permit States to use Federal funds under this program, including carry over and other unexpected funds, to cover State administrative expenses.

Changes: None.

Applicable Regulations (§654.4)

Comment: One commenter recommended that this section be revised to include 34 CFR part 668 on the list of regulations that apply to this program.

Discussion: 34 CFR Part 668 contains the Student Assistance General Provisions that establish general rules that apply to an institution that participates in a student financial assistance program authorized by Title IV of the HEA. The Secretary previously determined in §668.1(c) those Title IV programs to which the provisions of part 668 apply. This program is not among the programs listed in §668.1(c). Those specific sections of part 668 that do apply to this program are cross-referenced in the regulations for this program.

Changes: None.

Award Year (§654.5(b))

Comment: Several commenters requested clarification of the definition of "award year." In particular, some commenters wondered whether the period of an award year, July 1 of one year through June 30 of the following year, would preclude the use of funds for students attending summer school, and if not, which award year the funds should come from.

Discussion: The definition of "award year" is taken from section 481(d) of the HEA. The term "award year" refers to the period for which the Secretary awards the funds to the States. Thus, a State must obligate funds received for a particular award year by June 30 of that award year.

The Secretary does not believe it is necessary to clarify the definition of "award year." Rather, the Secretary believes the comments reflect confusion about the term "year of study," which is the period of time for which a State awards scholarship funds to a scholar. "Year of study" is defined in terms of an institution's definition of the period of time necessary to complete one year of coursework. Scholarships must be pro-rated based on that period of time. For example, if an institution defines the period of time necessary to complete one year of coursework as two semesters, and a summer session at that institution is considered the equivalent of one semester, a student who attends for the spring semester and the summer session would be entitled to the full scholarship for that year of study. All of the funds could come from one award year, as long as the funds were obligated by the institution by June 30.

Changes: None.

Administrative Responsibilities (§654.11(a))

Comment: One commenter asked whether administrative responsibilities for this program could be handled by the financial aid offices of the institutions that the scholars attend.

Discussion: Section 419E of the HEA requires the Secretary to enter into an agreement with each State that assures that the SEA will administer the program. The Secretary believes that an SEA could, consistent with the agreement, subcontract for assistance in the day-to-day implementation and operation of the program, as long as overall responsibility for the program remains with the SEA.

Changes: None.

Selection of Scholars (§§654.40(a) and 654.41(b)(4)(i))

Comment: One commenter asked for clarification of the regulations containing requirements related to the selection process. In particular the commenter wondered whether students who are legal residents of one State but attend secondary schools in another State are permitted to nominate themselves for consideration for a scholarship under this program.

Discussion: The Secretary declines to require States to adopt specific selection procedures, such as self-nomination, for out-of-State students. However, the Secretary believes that any procedure that precluded a legal resident who was attending secondary school out-of-State from applying would be inconsistent with §654.41(b)(4)(i) of the regulations, which requires SEAs to establish selection criteria and procedures to ensure that they select scholars without regard to whether the secondary school the scholar attends is within or outside the State.

Changes: None.

Equitable Geographic Distribution (§654.41(b)(3))

Comment: Several commenters asked for clarification of the requirement that States select scholars in a manner that ensures an "equitable geographic distribution." Some commenters recommended that Federal congressional districts be used as a basis for ensuring equitable geographic distribution. Other commenters suggested that the regulations be modified to permit States to define their own criteria, subject to the approval of the Secretary.

Discussion: The equitable geographic distribution requirement in the regulations is taken from section 419G(b) of the statute, which was revised to replace the specific requirements relating to distribution among congressional districts. The Secretary believes that distribution by congressional districts may be one way to ensure that the scholarships are equitably distributed, but leaves States the flexibility to develop their own criteria to meet the standard, subject to the Secretary's approval. No change in the regulations is necessary.

Changes: None.

Four-year Scholarship Period (§654.50(a))

Comment: Several commenters objected to the requirement in the regulations that SEAs disburse scholarship funds each year for a maximum of four years to each scholar that continues to meet the eligibility requirements. Commenters expressed the view that the statute does not state that scholarships shall be for four years only, and they requested the flexibility to provide awards on a one year basis or to provide five years of funding to scholars in five year programs. One commenter asked whether scholars who complete their undergraduate study in three years could be funded for their first year of graduate study.

Discussion: Section 419C(b) of the HEA provides that the scholarships shall be awarded for a period of "not more than" four years for the first four years of study. The language of the statute does not leave any room for an interpretation that five years of funding may be provided to a scholar in a five-year program. Moreover, since the 1992 Amendments removed the one-academic-year limit on the scholarship period that was previously provided under this program, the Secretary does not believe it would be consistent with legislative intent to permit States to limit scholarships to one year. The Secretary interprets "not more than" to mean that a scholar may receive less than four years of funding only if the scholar does not meet the continuing eligibility requirements.

Scholars who complete their course of study and receive an undergraduate degree in three years are eligible to receive scholarship funds under this program only for those three years of undergraduate study. Congress provided separate scholarship programs for graduate study under Title IX of the HEA, and this program is limited to

undergraduates. The Secretary does not believe that Congress intended to provide graduate assistance under this program when it expanded the scholarship period from one to four years. Rather, the Secretary believes that Congress expanded the scholarship period to four years because that is the normal time period required to obtain an undergraduate degree.

Changes: None.

Total Financial Assistance (§654.50(b))

Comment: Two commenters requested clarification regarding both the requirement that the SEA ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the cost of attendance and the requirement that loans be reduced prior to a scholarship under this program. In particular, the commenters wondered whether a Federal Pell grant can be reduced if a scholar receives a Federal Pell grant, a private donation, and a scholarship under this program. One commenter requested a definition of the term "cost of attendance."

Discussion: The requirement that the total amount of financial aid awarded to a scholar not exceed the total cost of attendance is taken from section 419H(a) of the HEA. The term "cost of attendance" is defined in section 472 of the HEA. The Secretary interprets the total amount of financial aid, for the purposes of section 419H, to mean the total amount of Federal financial assistance. Accordingly, a private donation should not be considered in determining the total amount of financial aid and should not be the basis for a reduction of a scholarship under this program.

On the other hand, a Federal Pell grant would be considered a part of the total amount of financial aid. Since under 419J of the HEA a Federal Pell grant cannot be reduced on the basis of the receipt of a scholarship under this program, if the total amount of Federal financial assistance exceeds the cost of attendance, a scholarship under this program should be reduced prior to a Federal Pell grant.

The Secretary has determined that if a scholar under this program is due to receive a loan, however, the loan should be reduced prior to the scholarship under this program. This policy is not prohibited by the HEA and is consistent with the purpose of this program to provide scholarship assistance to students who demonstrate outstanding academic achievement. Moreover, the Secretary does not believe that students should be required to incur greater loan debt when they are eligible to receive grant funds that do not have to be repaid.

Changes: Paragraph (b) of §654.5 has been revised to add a definition for "cost of attendance" that cross references the definition of that term in section 472 of the HEA.

Disbursement of Scholarship Funds (§654.40(c))

Comment: Several commenters asked for clarification regarding the requirement that scholars be selected and awards made prior to the end of each secondary school academic year. In particular, commenters wondered whether funds must actually be disbursed to scholars prior to the end of the secondary school academic year. A few commenters noted that the SEA may not receive the official award letter from the Department by that time.

Discussion: The requirement that scholars be selected and awards made prior to the end of the secondary school academic year is taken from section 419C(d) of the statute. The Secretary interprets this requirement to mean that scholars must be selected and notified in writing of their scholarship award prior to the end of the secondary school year. The Secretary does not believe that SEAs are required to actually disburse the scholarship funds to the scholars by that time.

Changes: None.

Continuing Eligibility Requirements (§§654.51 and 654.52)

Comment: A number of commenters objected to the eligibility requirements for scholars to continue to receive scholarship funds under this program. Several commenters objected to the requirement that scholars be enrolled full time, stating that it would put a strain on scholars who need to work or who are participating in co-op programs. A few commenters recommended removing references to pro-rating awards for part-time students. Several commenters recommended that the continuing eligibility criteria be limited to the following three requirements: attendance at an eligible institution, the absence of a default on a Federal student loan, and the maintenance of satisfactory academic progress. One commenter suggested that States have flexibility to award scholarship funds to continuing scholars prior to receipt of certifications from institutions that the scholars meet the continuing eligibility requirements. Several commenters expressed the view that this program is not a loan program and therefore should not include any requirements for the repayment of funds when they are awarded to scholars who fail to meet the continuing eligibility criteria.

Discussion: Continuing eligibility criteria are necessary for this program for the first time because the 1992 Amendments expanded the scholarship period from one to four years. The Secretary believes the continuing eligibility requirements in §654.51 of the proposed regulations are appropriate, and does not believe there is any basis for limiting the continuing eligibility criteria to the three criteria proposed by some commenters. For example, the Secretary believes the requirements related to citizenship, national, or legal resident status are equally applicable to new and continuing scholars and should be included in the requirements for continuing eligibility.

Moreover, the Secretary believes the regulations strike a fair compromise on the full-time attendance requirement, leaving it up to the SEA to permit part-time attendance after the first year in "unusual circumstances," as defined by the SEA. The Secretary believes that full-time attendance requirement is consistent with the intent of Congress because it will enable most scholars to graduate by the end of the four-year scholarship period.

Requiring the repayment of funds improperly awarded and the pro-ration of funds awarded for less than full-time attendance is simply responsible fiscal management of Federal funds. These provisions do not make this program a loan program. There are no requirements in the regulations for repayment of funds that are properly awarded.

States are responsible for setting up their own procedures to ensure that funds are properly awarded. To the extent that States establish systems that provide scholarship funds prior to receiving certification to document that the scholar meets the continuing eligibility requirements, the States risk awarding funds improperly. States are responsible for repaying funds that are improperly awarded even if they fail to recover them from the students.

Changes: None.

Study Abroad (§654.51(a)(2))

Comment: One commenter asked for clarification of the circumstances under which a student could receive scholarship funds under this program for a period during which they were studying abroad.

Discussion: Section 419H(b) of the HEA provides that the SEA must assure that a scholar under this program pursues a course of study at an "institution of higher education." An "institution of higher education" is defined under section 481 of the statute in terms of an educational institution in a "State." Accordingly, a scholar may not continue to receive funds under this program to pursue a course of study at an institution in a foreign country, with one exception. A scholar who is studying abroad through an institution of higher education that meets the definition in section 481 is considered to be eligible to receive funds under this program as long as the scholar is enrolled at and receiving credit from that institution of higher education.

Changes: None.

Carryover of Unexpended Funds (§654.60(b))

Comment: Several commenters requested clarification concerning how unexpected scholarship funds, including returned or collected funds, could be used. One commenter asked what happens to scholarship funds if a scholar who is notified of his or her award turns it down.

Discussion: The Education Department General Administrative Regulations (EDGAR), at 34 CFR 76.705, provide that States may carry over to the following fiscal year any funds that are not obligated by the end of the fiscal year for which Congress appropriated the funds. In addition, §654.60(b) of the regulations expressly permits States to retain for the following award year any funds that are awarded but subsequently returned or collected. Those funds may be used only to award scholarships.

In order to address the potential problem of unexpended funds because a student notified of his or her selection turned down the scholarship award, at which time it would likely be too late to select a new scholar for that year, the Secretary suggests that States consider setting up a procedure to select alternate scholars. Alternate scholars should be notified of their selection, along with other scholars, by the end of the secondary school year. Alternate scholars would be eligible for funds that became available prior to the beginning of their first year of postsecondary study.

Changes: None.

Priority for Continuing Scholars

Comment: Several commenters asked whether continuing scholars should be funded each year prior to new scholars.

Discussion: Funds for continuing scholars who meet the continuing eligibility requirements should be committed first, with the remaining funds used to award new scholarships. The Secretary believes that this is consistent with the intent of Congress to provide scholarships to students who show promise of continued academic achievement.

Changes: None.

Paperwork Burden (§§ 654.10, 654.11, 654.41, and 654.60)

Comment: One commenter expressed the view that the paperwork burden on States will exceed the estimated average of two hours since all States will be required to submit new applications this year. The commenter recommended increasing the estimate to six hours.

Discussion: The Secretary agrees with the commenter that the average paperwork burden this year is likely to exceed two hours because all States are required to submit new participation agreements.

Changes: The estimated average paperwork burden has ben increased from two to six hours.

PART 668-STUDENT ASSISTANCE GENERAL PROVISIONS

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Authority: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

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Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

Subpart A-General

Sec. 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance

program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution as defined in 34 CFR 600.6; and

(4) A vocational school as defined in 34 CFR 600.7.

(c) The Title IV, HEA programs include—

(1) The Pell Grant Program (20 U.S.C. 1070a et seq.; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b et seq.; 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c et seq.; 34 CFR Part 692);

(4) The Stafford Loan Program (20 U.S.C. 1071 et seq.; 34 CFR Part 682);

(5) The Supplemental Loans for Students (SLS) Program (20 U.S.C. 1078-1; 34 CFR Part 682);

(6) The PLUS Program (20 U.S.C. 1078-2; 34 CFR Part 682);

(7) The Consolidation Program (20 U.S.C. 1078-3; 34 CFR Part 682);

(8) The College Work-Study (CWS) Program (42 U.S.C. 2751 et seq.; 34 CFR Part 675);

(9) The Income Contingent Loan (ICL) Program (20 U.S.C. 1087a et seq.; 34 CFR Part 673); and

(10) The Perkins Loan Program (20 U.S.C. 1087aa et seq.; 34 CFR Part 674).

(Authority: 20 U.S.C. 1070 et seq.)

Note: (b) and (c) amended July 31, 1991, effective September 14, 1991. Paragraphs (c)(4) and (c)(7) amended June 8, 1993, effective July 23, 1993.

Sec. 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Institution of higher education
Nationally recognized accrediting agency or association
One-Year training program
Postsecondary vocational institution
Program of study by correspondence
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Secretary
Six-month training program
Vocational school

(b) The following definitions apply to all title IV, HEA programs:

Academic year: (1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (1) The Perkins Loan Program (34 CFR part 674);

(2) The College Work-Study (CWS) Program (34 CFR part 675); and

(3) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR part 676).

College Work-Study (CWS) Program: The part-time employment program for students authorized by title IV-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

Consolidation Program: The loan program authorized by Title IV-B, Section 428C, of the HEA which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, PLUS (as in effect prior to October 17, 1986), SLS, and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act.

Defense loan: A loan made before July 1, 1972, under title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under title IV-E of the HEA after June 30, 1972, that does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa et seq.)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(2) Has been admitted into a program of study by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Guaranteed Student Loan (GSL) programs: The loan programs authorized under Title IV-B of the HEA, including the Stafford Loan, PLUS, Supplemental Loans for Students (SLS), and Consolidation programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary institutions.

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 et seq.)

Income Contingent Loan (ICL) Program: The student loan program authorized by title IV-D of the HEA.

(Authority: 20 U.S.C. 1087a et seq.)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other title IV, HEA programs.

(Authority: 20 U.S.C. 1070a-6; 20 U.S.C. 1087vv).

National Defense Student Loan Program: The student loan program authorized by title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Payment period: (1) With respect to the Pell Grant Program, a payment period as defined in 34 CFR 690.3.

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

Pell Grant Program: The grant program authorized by title IV-A-1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Perkins loan: A loan made under title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under title IV-E of the HEA.

(Authority; 20 U.S.C. 1087aa et seq.)

Perkins Loan Program: The student loan program authorized by title IV-E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

PLUS Program: The loan program, authorized by Title IV-B, Section 428B, of the HEA, which encourages the making of loans to parents of dependent students.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Stafford Loan Program: The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) which encourages the making of loans to undergraduate, graduate, and professional students.

State: Each State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d-32)

State Student Incentive Grant (SSIG) Program: The grant program authorized by title IV-A-3 of the HEA.

(Authority: 20 U.S.C. 1070c et seq.)

Student Aid Report (SAR): A report provided to an applicant for a Pell Grant showing the amount of his or her expected family contribution.

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b et seq.)

Supplemental Loans for Students (SLS) Program: The loan program, authorized by Title IV-B, sections 428A, of the HEA, which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 20 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 et seq., unless otherwise noted)

Note: Section 668.2 amended July 31, 1991, effective September 14, 1991. Definitions of "Payment period" and "Student Aid Report (SAR)" added March 10, 1993, effective April 28, 1993. Paragraph (b) amended June 8, 1993, effective July 23, 1993.

Sec. 668.3 through 668.6 [Reserved]

Sec. 668.7 Eligible student.

(a) Eligibility. A student is eligible to receive assistance under the Pell Grant, SEOG, SSIG, Stafford Loan, PLUS, SLS, CWS, ICL, and Perkins Loan programs if the student—

(1) Is—

(i) A regular student enrolled or accepted for enrollment in an eligible program; or

(ii) For purposes of the Stafford Loan, PLUS, SLS, CWS, Perkins Loan, or Federal Direct Loan Demonstration programs—

(A) Enrolled, for no longer than one twelve-month period, as at least a half-time student in a course of study necessary for enrollment in an eligible program; and

(B) Enrolled or accepted for enrollment at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

(2) Is not enrolled in either an elementary or secondary school;

(3)(i) Has a high school diploma or its recognized equivalent;

(ii) If enrolled at a public or private nonprofit institution of higher education—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Except for the Stafford Loan, PLUS, or SLS programs, has the ability to benefit from the education or training offered by that institution, according to the requirements of paragraph (b) of this section;

(iii) If enrolled at a proprietary institution of higher education or postsecondary vocational institution—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Has the ability to benefit from the training offered by that institution, according to the requirements of paragraph (b) of this section; or

(iv) If enrolled at a vocational school, has the ability to benefit from the training offered, according to the requirements of paragraph (b) of this section;

(4)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau); or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs—

(A) Is a citizen of the Federated States of Micronesia who was enrolled in an institution on November 2, 1986;

(B) Is a citizen of the Marshall Islands who was enrolled in an institution on October 20, 1986; or

(C) Is a citizen of the Republic of Palau who was enrolled in an institution on the day preceding the effective date of the Compact of Free Association;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of paragraph (c) of this section;

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant or loan awarded under the Pell Grant, Perkins Loan, SEOG, or SSIG programs. A student owes a refund on a grant or loan if the student receives a grant or loan overpayment. A student receives a grant or loan overpayment if the student's grant or loan payments exceed the amount he or she is eligible to receive or use;

(7) Except as provided in paragraph (e) of this section, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL or GSL programs;

(8) Has filed a Statement of Educational Purpose and Selective Service Registration Status in accordance with the requirements of Subpart C;

(9) Except as provided in paragraph (h) of this section, has not borrowed, and certifies that he or she has not borrowed, as determined by the institution that he or she attends—

(i) In excess of the annual loan limits under the ICL, Stafford Loan, PLUS, or SLS programs in the same academic year for which he or she has applied for assistance under any Title IV, HEA program; and

(ii) In excess of the aggregate maximum loan limits under the ICL, Perkins Loan or GSL programs;

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance;

(11) Meets the requirements of—

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the Stafford Loan, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40; and

(12) Except as provided in paragraph (g) of this section, does not have property subject to a judgment lien for a debt owed to the United States.

(b) Ability to benefit. A student who is admitted to an institution as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible for any assistance under a Title IV, HEA program only if the student—

(1) Before admission—

(i) Is administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

(ii) Demonstrates that aptitude on that test;

(2) Receives a GED before the earlier of—

(i) The student's certification or graduation from his or her program of study; or

(ii) The completion of the student's first academic year of that program of study; or

(3) Enrolls in and successfully completes a remedial or developmental educational program of not more than one academic year that is prescribed by the institution, if the student—

(i) Is counseled before admission; or

(ii) Does not demonstrate the aptitude necessary to complete successfully the educational program to which he or she has applied on the test described in paragraph (b)(1) of this section.

(c) Satisfactory progress. In order for a student who has not received assistance under any Title IV, HEA program during an award year beginning before July 1, 1987, or for the Stafford Loan, PLUS, and SLS programs a period of enrollment beginning before July 1, 1987, to be eligible to receive assistance under any of those programs, an institution shall—

(1) Review the student's academic progress at the end of each academic year;

(2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that—

(i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; and

(3) Determine, in the case of a student who was not making satisfactory academic progress in accordance with paragraph (c)(2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

(d) Refund of a grant or loan overpayment. Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, Perkins Loan, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) Pell Grant overpayment.

(i) If an institution makes a Pell Grant overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(A) The Student is otherwise eligible; and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) If an institution makes a Pell Grant overpayment to a student as a result of its own error and cannot eliminate the overpayment under paragraph (d)(1)(i)(B) of this section, the student is eligible to receive assistance under a Title IV, HEA program if the student—

(A) Is otherwise eligible; and

(B) Acknowledges the overpayment and agrees, in writing, to repay it within six months.

(2) SEOG or SSIG overpayment. If an institution makes an SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(3) Perkins Loan overpayment. Except as provided in paragraph (h) of this section, if an institution makes a Perkins Loan overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments in the same period in which the overpayment occurred.

(e) Default on a loan. Notwithstanding paragraph (a)(7) of this section, a student who is or has been in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, or GSL programs is eligible to receive assistance under a Title IV, HEA program under the following conditions—

(1) GSL programs. A student who is in default on a loan made under the GSL programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii)(A) The Secretary, for a federally insured GSL programs loan or a GSL programs loan that has been assigned to the Department of Education, or a guaranty agency, for a loan guaranteed by that agency, determines that the student has made satisfactory arrangements to repay that loan;

(B) The loan has been paid in full; or

(C) The loan has been rehabilitated and sold under section 428F of the HEA.

(2) Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs. A student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii)(A) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan; or

(B) The loan has been paid in full.

(f) Effect of discharge of a Title IV, HEA program loan in bankruptcy.

(1) For purposes of determining a student's eligibility for a grant under the Pell Grant, SEOG, and SSIG programs, and employment compensation provided under the CWS Program, the Secretary does not consider that a student is in default on a loan made under any Title IV, HEA program, if that loan is discharged in bankruptcy.

(2) For purposes of determining a student's eligibility for a loan under any Title IV, HEA program, the Secretary considers a student who has previously defaulted on a loan made under any of those programs and who has, while in default, filed for relief in bankruptcy or received a discharge for that loan in bankruptcy, to remain in default unless the student is considered eligible in accordance with paragraph (e) of this section.

(g) Judgment for a debt. Notwithstanding paragraph (a)(12) of this section, a student who has property subject to a judgment lien for a debt owed to the United States is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) The student is otherwise eligible; and

(2) The student's institution has determined that the student has paid the judgment in full or made arrangements to repay the judgment that are satisfactory to the creditor.

(h) Eligibility for further assistance when borrowing in excess of loan limits. Notwithstanding paragraph (a)(9) of this section, a student who has inadvertently borrowed amounts in excess of annual or aggregate loan limits under the ICL, GSL, Perkins Loan or Federal Direct Loan Demonstration programs is eligible to receive assistance under a Title IV, HEA program if the student is otherwise eligible and has fully repaid any amount borrowed in excess of such limits.

(Authority: 20 U.S.C. 1070a-1070c-1, 1077, 1078, 1078-1-3, 1082, 1085, 1087a, 1087cc, and 1091; 28 U.S.C. 3201; 42 U.S.C. 2753; section 9 of Pub. L. 100-369).

Note: authority citation amended July 31, 1991, effective September 14, 1991. Paragraph (a)(1)(ii) amended June 8, 1993, effective December 1, 1987. Paragraphs (a)(6) and (a)(9) amended June 8, 1993, effective July 1, 1994. Paragraphs (a)(4)(iii), (a)(10), (a)(11), introductory text of (d) and (e), (e)(1)(ii), (e)(2)(ii), and (f) amended and new paragraphs (a)(12), (d)(3), (g), and (h) added June 8, 1993, effective July 23, 1993.

Sec. 668.8 Eligible program.

(a) General. An eligible program is a program of education or training that is offered by an eligible institution and that—

(1) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma;

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, except for the Stafford Loan, PLUS, or SLS programs, have the ability to benefit from the education or training offered; or

(iv) For a program at a vocational school, have completed or left elementary or secondary school and have the ability to benefit from the education or training offered;

(2)(i) Leads to an associate, bachelor's, professional, or graduate degree;

(ii) Is at least a two-year program that is acceptable for full credit toward a bachelor's degree;

(iii) Is at least a one-year training program leading to a certificate, degree, or other recognized educational

credential that prepares a student for gainful employment in a recognized occupation;

(iv) Is, for a proprietary institution of higher education or a postsecondary vocational institution, at least a six-month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(v) Is, for a vocational school, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that—

(A) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(B) In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

(C) In the case of an institution using credit hours or units to measure academic progress, is no less than eight semester or trimester hours or units or 12 quarter hours or units;

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(E) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

(vi) Is, for purposes of the Stafford Loan, PLUS, or SLS programs, at least a one-year training program for graduates of accredited health-professions programs that—

(A) Is provided by a hospital or health-care facility; and

(B) Leads to a degree or certificate; or

(3) For purposes of the Pell Grant, ICL, and SEOG programs, is an undergraduate program; and

(4) For the purposes of the Pell Grant Program, may consist of instruction in English as a second language (ESL) in accordance with paragraph (b)(2) of this section.

(b) Pell Grant Program—(1) Study by correspondence. For purposes of the Pell Grant Program, an eligible program of study by correspondence is an undergraduate program of education or training that meets the criteria for an eligible program in paragraph (a) of this section and that is designed to require at least 12 hours of preparation per week.

(2) English as a second language (ESL). (i) The Secretary considers a program that consists solely of instruction in ESL to be an eligible program if the program meets the requirements of paragraph (a) of this section and admits only students who the institution determines to need to ESL instruction to use already existing knowledge, training, or skills.

(ii) An institution shall document its determination that the instruction in ESL described in paragraph (b)(2)(i) of this section is necessary to enable each student whom it admitted to use already existing knowledge, training, or skills.

(c) If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (d) of this section to determine whether that program satisfies the requirements contained in paragraphs (a)(2)(iii), (iv), or (v) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

(d) For the purpose of determining whether a program described in paragraph (c) of this section satisfies the requirements contained in paragraphs (a)(2)(iii), (iv), or (v) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs—

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 clock hours of instruction.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c-1070c-2, 1085, 1087aa-1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

(Approved by OMB under control #1840-0537)

Note: introductory text in (a) and (a)(2)(i) amended and new paragraphs (c) and (d) added July 23, 1993, effective July 1, 1994.

Sec. 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

In determining the amount of title IV, HEA program assistance that a student who is enrolled in a program described in §668.8(c) is eligible to receive, the institution shall apply the formula contained in §668.8(d) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

Note: new Section 668.9 added July 23, 1993, effective July 1, 1994.

Subpart B-Standards for Participation in Title IV, HEA Programs

Sec. 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

(Authority: 20 U.S.C. 1094)

Sec. 668.12 Institutional participation agreement.

(a)(1) An institution may participate in any title IV, HEA program, other than the SSIG Program, only if—

(i) The Secretary determines that the institution meets the standards established in this subpart;

(ii) Except as provided in paragraph (a)(2) of this section, in the case of an institution seeking to participate for the first time in the Pell Grant Program, or the campus-based programs, or the Stafford Loan, SLS, or PLUS programs, the institution requires the following individuals to complete title IV, HEA program training provided by the Secretary:

(A) The individual designated by the institution under Sec. 668.14(a); and

(B)(1) In the case of a for-profit institution, the chief administrator of the institution; or

(2) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another administrative official of the institution designated by the chief administrator; and

(iii) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

(2) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(1)(ii) of this section has previously completed title IV, HEA program training provided by the Secretary, the institution may elect to request an on-site title IV, HEA certification review by the Secretary instead of requiring that individual to complete again the title IV, HEA program training provided by the Secretary. If the institution requests the on-site review, it may not begin participation in the new title IV, HEA program or programs until the Secretary conducts the review and notifies the institution that it is in compliance with title IV, HEA statutory and regulatory requirements.

(b)(1) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(2) In the participation agreement, the institution agrees—

(i) That it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs, including the requirement that it will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(ii) That it has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at that institution; and

(iii) That it will not request from or charge any student a fee for processing or handling—

(A) Any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance; or

(B) The Federal Student Assistance Report required under section 483(f) of the HEA.

(c)(1) Except as provided under paragraph (c)(3) of this section, a participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(3) The new participation agreement of an institution that changed its ownership resulting in a change in control is effective on the date that the institution changed its ownership if—

(i) The institution's prior participation agreement was not terminated through procedures contained in Subpart G; and

(ii) Under the Pell Grant and campus-based programs, the date that the institution changed ownership that resulted in a change in control and the date on which the Secretary executed the new agreement took place in the same award year.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary terminates a participation agreement through the procedures set forth in Subpart G.

(2) An institution may terminate a participation agreement.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

(f) An institution's participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the eligible institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141)

Note: new paragraph (f) added and authority citation amended December 3, 1992, effective January 29, 1993.

Sec. 668.13 Factors of financial responsibility.

(a) To begin and to continue participation in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this section.

(b) In general, the Secretary considers an institution to be financially responsible if it is able to—

(1) Provide the services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all of its financial obligations, including, but not limited to—

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(c) Notwithstanding paragraph (b) of this section, the Secretary considers an institution not to be financially responsible if—

(1) Under its basis of accounting, it—

(i) Has had operating losses over at least its two most recent fiscal years; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

(3) Under a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years;

(4)(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA program, or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds;

(5) A person acquires the ability to affect substantially the actions of the institution, and the following conditions apply:

(i) On or before the date that the person acquired that ability—

(A) The person had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; or

(B) Any member or members of the person's family, alone or together, had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; and

(ii) The person, any family member referred to in paragraph (c)(5)(i) of this section, or the defunct institution—

(A) Owes a liability on improperly expended or unspent title IV, HEA program funds received by the defunct institution or for refunds of institutional charges to students of the defunct institution; and

(B) If that person, family member, or defunct institution has agreed to repay that liability, is not making payments in accordance with that agreement.

(d)(1) The Secretary may determine an institution to be financially responsible, even if the institution is considered not to be financially responsible under paragraphs (b), or (c)(1) through (c)(3) of this section, if the institution submits to the Secretary a letter of credit payable to the Secretary in an amount established by the Secretary, a performance bond in an amount established by the Secretary, or any other document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or to continue to participate in any Title IV, HEA program.

(2) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(4) of this section if—

(i) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(ii) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(iii) At least five years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination.

(3) The Secretary may determine that an institution is financially responsible even if it would otherwise be

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considered not to be financially responsible under paragraph (c)(5) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person acquired the ability to affect substantially the actions of the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(1) The total percentage of the ownership interest held in the defunct institution by that person and any member or members of that person's family;

(2) The total percentage of the ownership interest held in the defunct institution by any member or members of that person's family;

(3) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(4) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(5) Twenty-five percent, if that person or any member of that person's family was a member of the board of directors, chief executive officer, or other executive officer of the defunct institution or of an entity holding at least a 25% ownership interest in the defunct institution;

(B) The applicable liability described in paragraph (c)(5)(iii) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(1) The person who acquired the ability to affect substantially the institution's actions should nevertheless be considered to lack that ability; or

(2) The person who acquired the ability to affect substantially the institution's actions and each member of that person's family nevertheless lacked the ability to affect substantially the actions of the defunct institution within 90 days of the date that that institution became defunct.

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, upon the request of the Secretary, and within the time period specified by the Secretary, submit for its two latest complete fiscal years a financial statement of the institution, prepared in accordance with generally accepted accounting principles and audited and certified by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards. The statement must contain a balance sheet and the related statements of income, earnings, and cash flow. The Secretary may also require the institution to submit the accountant's work papers. The Secretary considers the audit requirement in this paragraph to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of Title 31, United States Code); or

(2) Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(f)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds the institution received as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of its employees or officers.

(2) A public institution that is bonded by the State against the type of losses described in paragraph (f)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph must be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(g) For purposes of this section, a "defunct institution" is an institution that permanently closed or ceased to provide educational programs (except during normal vacation periods).

(h) For the purposes of this section, an "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term ownership interest includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(2) The term ownership interest does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan.

(i) For the purposes of this section, the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds at least a 25% ownership interest in the institution;

(2) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(3) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(4) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(5) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(6) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(i) The institution; or

(ii) An entity that holds at least a 25% ownership interest in the institution.

(j) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and Section 4 of Pub. L. 95-452)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (c)(3) and (c)(4)(iii)(B) amended and new paragraphs (c)(5), (d)(3), (h), (i), (j) and (k) added July 31, 1991, effective September 14, 1991. Paragraphs (e) through (j) amended June 8, 1993, effective July 23, 1993.

Sec. 668.14 Standards of administrative capability.

To begin and to continue participation in any Title IV, HEA program, an institution shall demonstrate to the Secretary that it is capable of adequately administering that program under the standards established in this section. Except as provided in Sec. 668.15, the Secretary considers an institution to have that administrative capability if it establishes and maintains student and financial records required under Sec. 668.23 and the individual Title IV, HEA program regulations and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA program. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame must be—

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of Sec. 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purposes, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for Title IV, HEA program funds;

(g)(1) After conducting the review of an application provided for under paragraph (f) of this section, refers for investigation any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are:

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income:

(2) Makes the referrals described in paragraph (g)(1) of this section to the Office of Inspector General of the Department of Education, or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the matter; and

(3) Reports to the Office of Inspector General for each calendar year all referrals made to State or local law enforcement agencies under this paragraph for that calendar year;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package; and

(i) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under control #1840-0537)

Note: (d)(2) amended June 8, 1993, effective July 23, 1993.

Sec. 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The cohort default rate, as defined in paragraph (h) of this section, on loans made under the Stafford Loan and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the Stafford loan and SLS cohort default rate for an institution exceeds 20 percent for any fiscal year, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV, HEA programs, if—

(i) The institution's Stafford loan and SLS cohort default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5

percent from its rate for the previous fiscal year (e.g., a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's Stafford loan and SLS cohort default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information, within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its students, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of students of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with Sec. 668.44(1)(iii) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with Sec. 668.44(c)(1)(iv) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(1) Title IV student aid recipients.

(2) High school graduates or holders of GED certificates at the time of enrollment.

(3) Students admitted on the basis of "ability to benefit" as defined in Sec. 668.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph (a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's Stafford loan and SLS cohort default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV, HEA programs.

(f)(1) Except as provided in paragraph (f)(6) of this section, an institution loses its eligibility to participate in the GSL programs if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (f)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992; and

(ii) 30 percent for fiscal year 1993 and all subsequent fiscal years.

(3) Except as provided in paragraph (f)(7) of this section, an institution that loses eligibility under paragraph (f)(1) of this section may not participate in the GSL programs beginning eight calendar days after the date the Secretary

notifies it that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution has lost its eligibility under paragraph (f)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution that loses its eligibility to participate in the GSL programs under paragraph (f)(1) of this section may not regain its eligibility to participate in the GSL programs until the institution—

(i) Is notified by the Secretary that the notice of ineligibility is withdrawn pursuant to paragraph (g)(6) of this section; or

(ii) Following the period described in paragraph (f)(3) of this section, satisfies the Secretary that it meets all requirements for participation in the GSL programs and executes a new agreement with the Secretary for participation in the GSL programs.

(5) If the Secretary withdraws an institution's loss of eligibility pursuant to paragraph (g)(6) of this section, the eligibility of the institution is restored effective as of the date of the loss of ineligibility.

(6) Until July 1, 1994, the provisions of paragraph (f)(1) of this section are not applicable to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(7)(i) If the Secretary's designated Department official receives written notice from an institution that loses its eligibility under paragraph (f)(1) of this section, within seven calendar days from the date on which the Secretary notified the institution that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section, that the institution intends to appeal the loss of eligibility under paragraph (g) of this section, the institution may, notwithstanding 34 CFR 668.25(c) continue to participate in the GSL programs until no later than the 30th calendar day following the date on which the Secretary notified the institution that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section, except as provided in paragraph (f)(7)(ii).

(ii) If an institution satisfies the conditions in paragraph (f)(7)(i) of this section for participating in the GSL programs until the 30th calendar day following the date on which the Secretary notified the institution that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section, it may, notwithstanding 34 CFR 668.25(c), continue to participate in the GSL programs after that date, until the Secretary issues a decision on the institution's appeal, if the institution, by the 30th calendar day following the date on which the Secretary notified the institution that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section, files an appeal that is complete in all respects in accordance with paragraph (g) of this section. However, the appeal of an institution relying on paragraph (g)(1)(i) of this section is not considered incomplete by virtue of a guarantee agency's not having yet complied with—or having failed to comply with—34 CFR 682.401(b)(14), which requires the agency to respond to an institution's request for verification of data within 15 working days, if the institution submitted that request within 10 working days from the date on which the Secretary notified the institution that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section, and the institution simultaneously submitted a copy of that request to the Secretary's designated Department official. When the institution receives the guarantee agency's response, to complete its appeal, the institution must submit the verified data to the Secretary's designated Department official within five working days in order to continue participating in the GSL programs until the Secretary issues a decision on the institution's appeal.

(g)(1) An institution may appeal the loss of eligibility to participate in the GSL programs under paragraph (f)(1) of this section by submitting an appeal to the Secretary's designated Departmental official, filed in accordance with the requirements in paragraph (j) of this section no later than 30 days after it receives notification of its loss of eligibility. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the loss of eligibility is not accurate; and

(B) A recalculation with corrected data verified by the cognizant guarantee agency or agencies would produce a cohort default rate for any of those fiscal years below the threshold percentage specified in paragraph (f)(2) of this section; or

(ii) The institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage specified in paragraph (f)(2) of this section. However, the Secretary recognizes this basis for appeal only with respect to a notification of loss of eligibility received by an institution in the fiscal year ending September 30, 1991; or

(iii) The institution meets the following criteria:

(A)(1) The institution has had 15 percent or fewer of its at least half-time students receive Stafford or SLS loans for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal; or

(2) The institution has, for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, enrolled, as two-thirds or more of its at least half-time students, individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution, such as evidence of qualification by those students for a Pell Grant index (formerly student aid index), as defined in 34 CFR 690.2, of zero for the applicable award year or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for the applicable award year of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and

(B)(1) The institution had two-thirds or more of its full-time students who were enrolled at the institution in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal complete the educational programs in which they were enrolled. This rate is calculated by comparing the number of students who were classified as full-time at their initial enrollment in the institution, and were originally scheduled, at the time of enrollment, to complete their programs within the relevant twenty-four month period, with the number of these students who received a degree, certificate, or other recognized educational credential from the institution; transferred from the institution to a higher level program at another institution for which the prior program provided substantial preparation; or, at the end of the twenty-four month period, remained enrolled and were making satisfactory academic progress toward completion of their programs. The calculation does not include students who did not complete their programs because they left the institution to serve in the armed forces; and

(2) The institution had a placement rate of two-thirds or more with respect to its former students who received a degree, certificate, or other recognized educational credential from the institution in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal. This rate is calculated by determining the percentage of all those students who, based on evidence submitted by the institution, are, on that date employed, or had been employed for at least 13 weeks following receipt of the credential from the institution, in the occupation for which the institution provided training, or are enrolled or had been enrolled for at least 13 weeks following receipt of the credential from the institution, in a higher level program at another institution for which the prior program provided substantial preparation.

(2) For purposes of paragraph (g)(1)(iii)(A) of this section, a student is originally scheduled, at the time of enrollment, to complete the program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

(3) An appeal submitted under paragraph (g)(1)(i) of this section is considered timely filed if the institution submits a letter of appeal by the 30-day deadline notifying the Secretary's designated Department official that it is appealing on this basis, including with that letter a copy of its request to each cognizant guarantee agency for verification of the cohort default rate data, and submits the verified data to the Secretary's designated Department official within five working days of its receipt from the guarantee agency. For purposes of paragraph (g)(4) of this section, the institution's appeal is not considered complete until the institution submits the verified data to the Secretary's designated Department official.

(4) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits a complete appeal that addresses the applicable criteria in paragraphs (g)(1)(i)-(iii) of this section to the Secretary's designated Departmental official.

(5) The decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(6) The Secretary withdraws the notification of ineligibility to participate in the GSL programs sent to an institution under paragraph (f)(1) of this section, if the Secretary determines that the institution's appeal satisfies one of the grounds specified in paragraphs (g)(1)(i)-(iii) of this section.

(7)(i) An institution that appeals under paragraph (g)(1)(i) of this section must submit a written request to the guarantee agency or agencies that guaranteed the loans used in the calculation of its cohort default rate to verify the data used to calculate its cohort default rate and simultaneously provide a copy of that request to the Secretary's designated Department official.

(ii) The written request must include the names and social security numbers of the borrowers the institution wishes the agency to verify and detailed information on the nature of the suspected inaccuracy in the data the institution is requesting the agency to verify.

(8) An institution must include in its appeal a certification by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(9) An institution that appeals on the ground that it meets the criteria contained in paragraph (g)(1)(iii) of this section must include in its appeal the following information:

(i) For purposes of paragraph (g)(1)(iii)(A)(1):

(A) The number of students that were enrolled at least half-time at the institution in the relevant twenty-four month period; and

(B) The name, address, and social security number of each of the institution's current and former students who received Stafford or SLS loans during that twenty-four month period.

(ii) For purposes of paragraph (g)(1)(iii)(A)(2):

(A) The number of students that were enrolled at least half-time at the institution in the relevant twenty-four month period; and

(B) The name, address, social security number and Pell Grant index (formerly student aid index), if applicable, of each student from a disadvantaged economic background who was enrolled at least half-time at the institution in the relevant twenty-four month period and the measure and data used to determine that the student is from a disadvantaged economic background.

(iii) For purposes of paragraph (g)(1)(iii)(B)(1):

(A) The number of students that were enrolled at least full-time at the institution in the relevant twenty-four month period;

(B) For each of those former students who received a degree, certificate, or other recognized educational credential

from the institution, the student's name, address, and social security number;

(C) For each of those former students who transferred to a higher level program at another institution, the name, address, social security number of the student, and the name and address of the institution to which the student transferred and the name of the higher level program; and

(D) For each of those students who remained enrolled and was making satisfactory academic progress toward completion of the program of study, the student's name, address, and social security number.

(iv) For purposes of paragraph (g)(1)(iii)(B)(2):

(A) The number of students that received a degree, certificate, or other recognized credential at the institution in the relevant twenty-four month period; and

(B)(1) For each of those former students who is employed or had been employed for at least 13 weeks following receipt of a degree, certificate or other credential from the institution, the student's name, address, and social security number, the employer's name and address, the student's job title, and the dates the student was so employed; and

(2) For each of those former students who enrolled in a higher level program at another institution for which the appealing institution's program provided substantial preparation, the former student's name, address, and social security number, the subsequent institution's name and address, the name of the program of study, and the dates the former student was so enrolled.

(h) The following definitions apply to this section and Sec. 668.90 of this part:

(1)(i) Cohort default rate means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on Stafford or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on Stafford or SLS program loans received for attendance at that institution who default before the end of the following fiscal year. In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guarantee agency has paid claims for insurance, and, in calculating the cohort default rate, excludes any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate. For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the term "cohort default rate" means the average of the rates calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition. Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(ii)(A) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iii)(A) For institutions that change status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For institutions that change status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(D) For institutions that change status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(i) An institution loses its eligibility to participate in the SLS program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which such rate is available is equal to or greater than 30 percent. However, the institution's loss of eligibility does not apply to a student who is not an undergraduate student or who has received an SLS loan previously for enrollment in the same program of instruction at the institution (except that previous receipt of an SLS loan shall not qualify a student for an SLS loan with respect to an extension of the duration of that program which was effected on or after November 8, 1989).

(Authority: 20 U.S.C. 1082, 1094)

(Approved by OMB under control #1840-0537)

(j)(1) An appeal by an institution under paragraph (g) of this section or a notice of intent to appeal under paragraph (f)(7)(i) of this section must be filed with the designated

Department official by hand-delivery, mail, or facsimile transmission.

(2) The filing date of an appeal under paragraph (g) of this section is the date the document is—

(i) Hand-delivered;

(ii) If mailed, received by the designated Department official; or

(iii) Sent by facsimile transmission.

(3) Documents filed by facsimile transmission must be transmitted to the designated Department official in accordance with instructions provided by the Secretary in the notice of default rate provided under this section. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the designated Department official, and may be required by that official to provide a hard copy of the document filed by facsimile.

(4) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(Authority: 20 U.S.C. 1082, 1094)

Note: Section 668.15 amended July 19, 1991, effective September 3, 1991. Paragraph (g)(1) amended and new paragraph (j) added March 10, 1993, effective April 28, 1993.

Sec. 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant SEOG, CWS, ICL, and Perkins Loan programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e. use as collateral) Title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1070 et seq.)

Sec. 668.17 [Reserved]

Sec. 668.18 [Reserved]

Sec. 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any Title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or the student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending.

(3) Except as provided in paragraph (a)(5) of this section, until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution—

(i) May withhold payment of Pell Grant, campus-based, and ICL funds to the student;

(ii) May disburse Pell Grant, campus-based, or ICL funds to the student for one payment period only;

(iii) May decline to certify the student's Stafford loan or SLS application;

(iv) Shall not release Stafford loan or SLS proceeds to a student; and

(v) Shall not certify an application for a PLUS Program loan sought on behalf of the student.

(4)(i) An institution may not hold Stafford loan or SLS proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Stafford loan or SLS application before receiving all required financial aid transcripts shall return to the lender any Stafford loan or SLS proceeds for the student if it receives a financial aid transcript indicating that—

(A) The amount of the loan proceeds would cause the student to exceed a loan limit under the Stafford loan or SLS programs;

(B) The student is in default on any loan made under the GSL, ICL, National Defense/Direct Student Loan, or Perkins Loan programs; or

(C) The student owes a repayment on a grant received under the Pell Grant, SEOG, or SSIG programs.

(5) The institution may disburse Title IV, HEA program funds to the student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of Title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution for which a financial aid transcript is requested—

(1) All information in its possession concerning whether a student attended institutions other than itself and the institution for which the transcript is requested; and

(2)(i) A financial aid transcript for that student, if the student received or benefitted from any Title IV, HEA program assistance while attending the institution providing the transcript; or

(ii) A written certification that—

(A) The student did not receive or benefit from any Title IV, HEA program assistance while attending the institution from which the transcript was requested; or

(B) The transcript pertains solely to years for which the institution no longer has and is no longer required to keep records under the applicable Title IV, HEA program recordkeeping requirements.

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any year preceding the award for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the Stafford Loan, PLUS, or SLS programs for attendance at the institution or any loan made under the Consolidation Program;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution;

(6) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(7) The total amount of loans made under the ICL Program to the student for attendance at the institution;

(8) The total amount of loans made under the National Defense/Direct Student Loan and Perkins Loan programs to the student for attendance at the institution;

(9) Whether the student owed an outstanding balance on July 1, 1987 on either a Defense loan or Direct loan made for attendance at the institution;

(10) The amount of and period covered by each loan made to the student under the Stafford Loan, PLUS, or SLS programs for attendance at the institution; and

(11) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution.

Authority: 20 U.S.C. 1094

(Approved by the Office of Management and Budget under control number 1840-0537)

[FR Doc. 88-19678 Filed 8-29-88; 8:45 am]

Sec. 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

(d) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, Stafford Loan, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if—

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program;

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course; or

(3) Except for a course in English as a second language, the educational level of instruction provided in that course is below the secondary level. For purposes of this section, the Secretary considers a course to be below the secondary level if any of the following entities determine that course to be below the secondary level:

(i) The State agency that legally authorized the institution to provide postsecondary education.

(ii) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution.

(iii) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public

postsecondary vocational education that approves the institution.

(iv) The institution.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, Stafford Loan, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to—

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

[Authority: 20 U.S.C. 1094]

Note: heading, (c)(1), and (c)(2) amended and new paragraph (c)(3) added July 31, 1991, effective September 14, 1991.

Sec. 668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

[Authority: 20 U.S.C. 1094]

Sec. 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) Repayment of institutional refunds to Title IV, HEA programs. (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period minus the amount that institution may retain under paragraph (a)(4) of this section for the portion of the payment period that the student was actually enrolled at the institution.

(3) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that has not been paid by financial aid for the payment period, exclusive of—

(i) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(ii) Late disbursements of loans made under the Stafford, SLS, and PLUS programs in accordance with 34 CFR 682.207(d).

(4) In determining the amount that the institution may retain for the portion of the payment period during which the student was actually enrolled, an institution shall—

(i) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that payment period from the scheduled cash payment for the payment period; and

(ii) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy.

(5) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the CWS Program) paid for institutional charges for the payment period if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount which may be retained by the institution under the institution's refund policy.

(6) The portion of the refund than an institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

$$\frac{\text{Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) received for the payment period.}}{\text{Total amount of assistance (exclusive of all work earnings) received for the payment period.}}$$

(b) Repayments to Title IV, HEA programs of disbursements made to the student for noninstitutional costs. (1) If a student officially withdraws, drops out, or is expelled on or after his or her first day of class of a payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the CWS,

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Stafford Loan, PLUS, or SLS program received for that payment period by the student for noninstitutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 673, 674, 675, 676, and 690).

(2)(i) To determine if any of the Title IV, HEA program assistance received by the student for noninstitutional costs constitutes an overpayment, the institution shall subtract the noninstitutional costs incurred by the student for that portion of the payment period during which the student was enrolled from the amount of assistance disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than the CWS, Stafford Loan, PLUS, or SLS programs for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

$$\frac{\text{Total amount of Title IV, HEA program assistance (exclusive of CWS and Stafford Loan, PLUS, and SLS loans) received for the payment period.}}{\text{Total amount of assistance (exclusive of all work earnings and Stafford Loan, PLUS, and SLS loans) received for the payment period.}}$$

(c) Payment period. For purposes of this section—

(1) A payment period under the Stafford Loan, PLUS, and SLS programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under Stafford Loan, PLUS, or SLS program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) Drop out date. For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documented by the institution.

(e) Distribution among the Title IV, HEA programs. An institution shall develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section of the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy must be applied consistently to all students who have received Title IV, HEA program assistance and must conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the CWS Program.

(2) No amount of Title IV, HEA program portion of the overpayment may be allocated to the Stafford Loan, PLUS or SLS program.

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program.

(4) The amount of the Title IV, HEA program portion of the refund allocated to the Stafford Loan, PLUS, and SLS programs must be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Part 682).

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, Stafford Loan, PLUS and SLS programs must be returned to the appropriate program account(s) by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, Stafford Loan, PLUS, and SLS programs must be returned to the appropriate program account(s) within 30 days of the date that the student makes the repayment.

(f) For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including PLUS loans received on the student's behalf) from Federal, State, institutional or other scholarship, grant or loan programs.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (a) and (b)(3)(ii) amended and new paragraph (f) added June 8, 1993, effective September 30, 1993.

Sec. 668.23 Audits, records, and examination.

(a) An institution which participates in the ICL (34 CFR Part 673), Perkins Loan (34 CFR Part 674), CWS (34 CFR Part 675), SEOG (34 CFR Part 676), Stafford Loan (34 CFR Part 682), PLUS (34 CFR Part 682), SLS, or Pell Grant (34 CFR Part 690) programs shall comply with the regulations for those programs concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) An institution that participates in any title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Education Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits,

investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel that are not tape recorded by the institution.

(c)(1) An institution which participates in the ICL, Perkins Loan, CWS, SEOG, Stafford Loan, PLUS, SLS, or Pell Grant programs shall have performed a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's Standards.

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4)(i) If the institution receives campus-based funds, the institution shall submit the audit report to the Inspector General by March 31 of the year following the last award year covered by the audit.

(ii) If the institution does not receive campus-based funds, the institution shall submit the audit report to the Inspector General by January 31 of the year following the last year covered by the audit.

(5) The institution shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(2) Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(e) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(f)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the Stafford Loan, PLUS, and SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see Sec. 668.19);

(vii) The verification of student aid application data; and

(viii) Information substantiating all disclosures made to a prospective student under Sec. 668.44 (c) through (f) of this part.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

Authority: 20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95-452)

(Approved by OMB under control #1840-0537)

Note: (b) amended July 31, 1991, effective September 14, 1991. Paragraph (d) amended December 23, 1991, effective February 6, 1992.

Sec. 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 45 days of the date of the Secretary's notification, unless—

(i) The institution files an appeal under the procedures established in Subpart H; or

(ii) The Secretary permits a longer repayment period.

(3) If the institution is found to have expended funds improperly under the proceedings established in Subpart H, the institution shall repay those funds within 30 days of a final determination under Subpart H unless the Secretary permits a longer repayment period.

(Authority: 20 U.S.C. 1094)

Sec. 668.25 Loss of institutional eligibility to participate in the Title IV, HEA programs.

(a) If an institution closes, stops providing educational instruction, or loses its eligibility to participate in the Title IV, HEA programs it shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date of the closing or cessation of instruction, or the date on which the loss of eligibility becomes final—

(i) All financial, performance, and other reports required by each applicable title IV, HEA program regulation; and

(ii) A letter of engagement for an independent audit of all title IV, HEA program funds it received, the report of which shall be reported to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of title IV, HEA programs;

(4) Inform the Secretary of how it will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan, Perkins Loan, or ICL programs; and

(5) Continue to distribute refunds of unearned payments for institutional charges according to 668.22.

(b) If an institution closes or stops providing educational instruction, it shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended title IV, HEA program funds it has, less its administrative allowance, if applicable; and

(2) Return to the appropriate lenders any GSL proceeds it has received but not delivered to the students or credited to the students' accounts.

(c) If an institution loses its eligibility to participate in title IV, HEA programs during a payment period, but continues to provide educational instruction to eligible students enrolled in its formerly eligible programs from the date that the institution lost its eligibility until the scheduled completion date of that payment period or period of enrollment, it may—

(i) For the Pell Grant and campus-based programs, use title IV, HEA program funds in its possession or request additional funds from the Secretary, under conditions specified by the Secretary, if it does not possess sufficient funds, to satisfy any unpaid commitment made for that payment period to a student prior to the institution's loss of eligibility; and

(2) For the Stafford and SLS programs, if the proceeds of the first disbursement of a Stafford or SLS loan were delivered to the student or credited to the student's account prior to the institution's loss of eligibility, credit the student's account or deliver to the student any subsequent disbursement of that Stafford or SLS loan to satisfy any unpaid commitment made to a student for that period of enrollment for which the Stafford or SLS loan was made.

(d) For purposes of this section—

(1) A commitment under the Pell Grant Program occurs when a student is enrolled and attending the institution and has submitted a valid student aid report to the institution.

(2) A commitment under the campus-based and ICL programs occurs when a student is enrolled and attending

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the institution and has received a valid award letter from the institution; and

(3) A commitment under the GSL programs occurs when the Secretary or guarantee agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094).

Note: Section 668.25 amended July 19, 1991, effective September 3, 1991.

Subpart C-Statement of Educational Purpose and Selective Service Registration Status

Sec. 668.31 Scope.

This subpart establishes rules by which an otherwise eligible student files a Statement of Educational Purpose and a Statement of Registration Status in order to receive assistance under any title IV, HEA program.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

Sec. 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution, or under the Stafford Loan, PLUS, or SLS programs, with the lender. In this statement the student shall—

(1) Include his or her social security number or if he or she does not have a social security number, his or her student identification number; and

(2) Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment, or, for the purposes of the Stafford Loan, PLUS, or SLS programs, at the institution named on the student's loan application.

(b) Except as provided in paragraph (c) of this section, the student shall file the Statement of Educational Purpose once for each award year, or, under the Campus-Based programs, either once for each award year or once for each 12-month period for which a determination of need is made.

(c) A student is only required to file the Statement of Educational Purpose once for his or her course of study if—

(1) The course of study is one academic year or less in length; and

(2) The student is to complete the course of study within a 12-month period.

(d) Until a student who is applying for Title IV, HEA program assistance under the Pell Grant, campus-based, SSIG or ICL programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any Title IV, HEA program.

(Authority: 20 U.S.C. 1091)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986 and 52 FR 45734, Dec. 1, 1987]

(Approved by OMB under control #1840-0537)

Sec. 668.33 Statement of Registration Status.

(a)(1) Except as provided in paragraph (b) or (c) of this section, until a student who is applying for Title IV HEA program assistance, or under the PLUS Program, who will benefit from the loan, files a Statement of Registration Status with the institution, an institution may not, for any period of instruction—

(i) Disburse funds to the student under any Title IV, HEA program; or

(ii) Certify the institutional portion of the application under the Stafford Loan, PLUS, or SLS programs.

(2) In the Statement of Registration Status the student shall certify either that he is registered with Selective Service or that, for a specified reason, he or she is not required to be registered.

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence, that—

(1) The student is or was not required to be registered with Selective Service; or

(2) The student—

(i) Was required to be registered with the Selective Service prior to age 26;

(ii) Is now at least 26 years old or older;

(iii) Failed to register with the Selective Service prior to age 26; and

(iv)(A) Demonstrates to the institution that he did not knowingly and willfully fail to register with the Selective Service. The Secretary considers that a student satisfies this requirement by obtaining and presenting to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register; or

(B) Served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard.

(c) The requirement set forth in paragraph (a) of this section does not apply to students who are—

(1) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(i) The Citadel, Charleston, South Carolina;

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(ii) North Georgia College, Dahlonega, Georgia;

(iii) Norwich University, Northfield, Vermont; or

(iv) Virginia Military Institute, Lexington, Virginia;

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who are on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(3) Unable to present themselves for registration for reasons beyond their control, such as being hospitalized, incarcerated, or institutionalized.

(d) Except as provided in paragraph (e) of this section, a student required under paragraph (a) of this section to file a Statement of Registration Status shall do so once for each award year. If the student's status under registration law changes during the award year after he has completed the Statement of Registration Status, the student is not required to file a new statement for that award year.

(e) An institution may waive the requirement that a student file a Statement of Registration Status once for each award year, if—

(1) The institution already has on file a Statement of Registration Status for that student; and

(2) The student's status under registration law has not changed since the institution received the most recently filed Statement of Registration Status.

(f) An institution which waives the requirement that a student file the Statement of Registration Status is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register, and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(g) An institution which accepts a Statement of Registration Status from a student is liable for any title IV aid provided to a student who was required to register, but who was not registered, if the institution—

(1) Has information that conflicts with the student's Statement; and

(2) Its acceptance of the student's representation on the Statement regarding his status was not reasonable in light of all the available information.

(Authority: 50 U.S.C. App. 462)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986]

(Approved by OMB under control #1840-0537)

Note: (a)(1)(ii) and (b) amended June 8, 1993, effective July 23, 1993.

Sec. 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement to satisfy the requirements of Secs. 668.32 and 668.33(a) and the notification requirement of Sec. 668.35(a):

Statement of Educational Purpose

I certify that I will use any money I receive under a Title IV, HEA loan, grant, or work study program only for expenses related to my study at (Name of Institution)

Statement of Registration Status

_____ I certify that I am not required to be registered with Selective Service because:

_____ I am female.

_____ I am in the armed services on active duty. (Note: Does not apply to members for the Reserves and National Guard who are not on active duty.)

_____ I have not reached my 18th birthday.

_____ I was born before 1960.

_____ I am a permanent resident of the Trust Territory of the Pacific Islands (Palau).

_____ I am a resident of the Marshall Islands or the Federated States of Micronesia.

_____ I certify that I am registered with Selective Service.

Signature: ____________________

Date: _______________________

Social Security Number (or Student Identification Number only if you have no Social Security Number): ______________________________

Notice: To receive Title IV financial aid, you must complete the Statement of Educational Purpose, and you must be registered with Selective Service if required to register. If you purposely give false information on this form, you may be subject to fine or imprisonment or both.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

(Approved by OMB under control #1840-0537)

Note: Section 668.34 amended June 8, 1993, effective July 1, 1994.

Sec. 668.35 Notification and administrative review.

(a)(1) General notice. An institution shall provide general written notice to any student seeking aid under any title IV, HEA program that in order to receive this aid, a

student must register with Selective Service, if required to do so under registration law.

(2) Specific notice. Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, or who fails to file the Statement of Registration Status in accordance with Sec. 668.33, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b)(1) A student notified under paragraph (a)(2) of this section who has not registered although required to do so may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by registering with Selective Service and filing a Statement of Registration Status before the end of that award year.

(2) A student notified under paragraph (a)(2) of this section who fails to file a Statement of Registration Status but has registered with the Selective Service or is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by filing a Statement of Registration Status within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) Administrative review. (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has complied with that requirement may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(d) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(e) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 50 U.S.C. App. 462)

(Approved by OMB under control #1840-0537)

Sec. 668.36 Record retention requirements.

An institution shall include in each student's record in accordance with the record retention provisions in each of the title IV, HEA program regulations—

(a) The signed Statement of Educational Purpose;

(b) The signed Statement of Registration Status, if required; and

(c) Any documents used to verify the student's registration status.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

Subpart D-Student Consumer Information Services

Source: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

Sec. 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see Sec. 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see Sec. 668.43).

(b) The following definition applies to this subpart:

Prospective student: An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution.

(Authority: 20 U.S.C. 1092)

Sec. 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in Sec. 668.43 and Sec. 668.44; and

(b) Make those materials available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(Authority: 20 U.S.C. 1092)

Sec. 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(Authority: 20 U.S.C. 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Sec. 668.44 Institutional information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by Sec. 668.22;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under Sec. 668.45 and information regarding how and where those persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Authority: 20 U.S.C. 1082, 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (c) through (f) removed and (a)(3) amended July 31, 1991, effective September 14, 1991.

Sec. 668.45 Availability of employees for information dissemination purposes.

(a) Availability. (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in Sec. 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) Waiver. (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

Subpart E-Verification of Student Aid Application Information

Sec. 668.51 General

(a) Scope and purpose. The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, campus-based, need-based Income Contingent Loan (ICL), and Stafford Loan programs.

(b) Applicant responsibility. If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant shall provide the specified documents or information.

(c) Institutional Quality Control Project. (1) For the 1986-87 through the 1993-94 award years, the Secretary exempts institutions selected to participate in the Institutional Quality Control Project from the requirements contained in the following sections:

(i) Section 668.53 (a)(1) through (4).

(ii) Section 668.54 (a)(2), (3), and (5).

(iii) Section 668.56.

(iv) Section 668.57, except that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

(d) Foreign schools. The Secretary exempts from the provisions of this subpart institutions participating in the GSL Programs that are not located in a State.

(Authority: 20 U.S.C. 1094)

Note: (c) amended July 31, 1991, effective July 1, 1991. Section 668.51 amended December 2, 1991, effective beginning with 1992-93 award year.

Sec. 668.52 Definitions.

The following definitions apply to this subpart:

Base year means the calendar year preceding the first calendar year of an award year.

Edits means a set of pre-established factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

Expected family contribution (EFC) means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

Need analysis servicer means an agency or organization who has had its system for determining EFCs under the campus-based, GSL, and need-based ICL programs certified by the Secretary for the applicable award year.

Student aid application means an application submitted by a person to have his or her EFC determined under the Pell Grant, campus-based, need-based ICL, or GSL programs.

(Authority: 20 U.S.C. 1094)

Note: Section 668.52 amended December 2, 1991, effective January 16, 1992.

Sec. 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in a student aid application in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification if, as a result of verification, the applicant's EFC changes and results in a change in the applicant's award of loan;

(4) The procedures the institution requires an applicant to follow to correct application information determined to be in error; and

(5) The procedures for making referrals under Sec. 668.14 (g).

(b) The institution's procedures must provide that it shall furnish, in a timely manner, to each applicant selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094)

Note: Section 668.53 (except for 668.53(a)(5)) amended December 21, 1991, effective beginning with 1992-93 award year. Section 668.53(a)(5) effective January 16, 1992.

Sec. 668.54 Selection of applications for verification.

(a) General requirements. (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph.

(2) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in Sec. 668.56, except that no institution is required to verify the applications of more than 30 percent of its applicants for assistance under the Pell Grant, campus-based, need-based ICL, and Stafford Loan programs in an award year. The Secretary may certify need analysis servicers, and may enter into agreements with those servicers under which the Secretary provides the edits to the servicer and the servicer indicates to institutions the applications selected for verification.

(3) The institution shall require each applicant to verify the applicable items specified in Sec. 668.56 (except that no eligible institution is required to verify more than 30 percent of the applications submitted in any award year), if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or the need-based ICL program or requests the institution to certify his or her application for a Stafford Loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated on behalf of the applicant submitting an application to a certified need analysis servicer that has an agreement with the Secretary as described under paragraph (a)(2) of this section.

(4) If an institution has reason to believe that any information on an application used to calculate an EFC is inaccurate, it shall require the applicant to verify the information that it has reason to believe is inaccurate.

(5) If an applicant is selected to verify the information on his or her application under paragraph (a)(2) of this section, the institution shall require the applicant to verify the information as specified in Sec. 668.56 on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for the applicable award year.

(6) An institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

(b) Exclusions from verification. (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has reason to believe that the information reported by the applicant is incorrect, it need not verify applications of the following applicants:

(i) An applicant who is—

(A) A legal resident of and, in the case of a dependent student, whose parents are also legal residents of, the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or

(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student, whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student, both of whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown and cannot be obtained by the applicant.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in Sec. 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, pages 1 and 3 of the applicant's SAR.

(3) An institution need not require an applicant to document a spouse's information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1091, 1094)

Note: Section 668.54 amended December 2, 1991, effective beginning with 1992-93 award year.

Sec. 668.55 Updating Information.

(a)(1) Unless the provisions of paragraph (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If, as a result of a change in the applicant's marital status, the number of family members in the applicant's household, the number of those household members attending postsecondary education institutions, or the applicant's dependency status changes, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution.

(c) If an applicant has received Pell Grant, campus-based, need-based ICL, or Stafford Loan program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant, campus-based, or need-based ICL program assistance or certifying a Stafford Loan application; and

(2) Is not required to adjust the Pell Grant, campus-based or need-based ICL program assistance previously awarded to the applicant for that award year, or any previously certified Stafford Loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a Stafford Loan application for an applicant, the applicant shall not update his or her dependency status on the Stafford Loan application.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094)

Note: Section 668.55 amended December 2, 1991, effective beginning with 1992-93 award year.

Sec. 668.56 Items to be verified.

(a) Except, as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under Sec. 668.54(a)(2) or (3) to submit acceptable documentation described in Sec. 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year if base year data was used in determining eligibility, or income earned from work, for a non-tax filer.

(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household or households of the applicant's parents if—

(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married to each other and not separated and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and not separated and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The following untaxed income and benefits for the base year if base year data was used in determining eligibility—

(i) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive a SAR and the institution has reason to believe that those benefits were received;

(ii) Child support if the institution has reason to believe that child support was received;

(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account;

(iv) Interest on tax-free bond;

(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;

(vi) The earned income credit taken on the applicant's tax return; and

(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base year which is included on the tax return form, excluding information contained on schedules appended to such forms.

(b) If an applicant selected for verification submits a SAR to the institution or the institution receives an output document as described in Sec. 668.54 (a)(3)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under Sec. 668.54 (a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household, who are enrolled as at least half-time students in postsecondary educational institutions.

(c) If the number of family members in the household or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(d) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment status from its own records, the institution need not require the applicant to verify that information.

(e) If the application or the applicant's spouse or, in the case of a dependent student, the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency determining their eligibility for that income or those benefits by means of a financial needs test, the institution need not require the untaxed income and benefits to be verified.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094, 1095)

Note: Section 668.56 amended December 2, 1991, effective beginning with 1992-93 award year. Paragraphs (a) and (c) amended August 27, 1992, effective November 7, 1992.

Sec. 668.57 Acceptable documentation.

(a) Adjusted Gross Income (AGI), income earned from work, and U.S. income tax paid. (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify AGI and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of an income tax return or an IRS Listing of Tax Account Information of an individual whose income was used in calculating the EFC of an applicant, the documentation set forth in paragraph (a)(4) of this section if the individual for the base year—

(i) Has not filed and is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or a Listing of Tax Account Information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide a Listing of Tax Account Information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed nor is required to file an income tax return for the base year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base year, or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W-2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W-2 that the individual received for the base year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U.S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed income tax return when filed. When an institution receives the copy of the return, it may re-verify the adjusted gross income and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W-2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W-2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) Number of family members in household. An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parent if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) Number of family household members enrolled in postsecondary institutions. (1) Except as provided in §668.56 paragraphs (b), (c), (d), and (e), an institution shall require an applicant selected for verification to verify annually

information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify that information by submitting a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution attended by each student.

(2) If the institution has reason to believe that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend or the institution has information itself that the student will be attending the same school as the applicant.

(d) Untaxed income and benefits. An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in Sec. 668.56(a)(5)(iii), (iv), (v), (vi), and (vii) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant individuals certifying that no tax return was filed or is required to be filed and providing the sources and amount of untaxed income and benefits specified in Sec. 668.56(a)(5)(iii), (iv), (v), and (vi);

(2) Social security benefits—

(i) If an edit comment appears on the applicant's SAR indicating incorrect Social Security benefits, the applicant shall verify Social Security benefits, by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant, applicant's parents, and any other children of the applicant's parents who are members of the applicant's household, in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR and the institution has reason to believe that the applicant has incorrectly reported Social Security benefits received by the applicant or any individual described in paragraph (d)(2)(i) of this section, the applicant shall verify Social Security benefits by submitting either the document described in paragraph (d)(2)(i) of this section or, at the institution's option, a statement signed by both the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution has reason to believe that the information provided is inaccurate, the applicant must verify the amount of child support received by providing a document such as—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094)

Note: Section 668.57 amended December 2, 1991, effective beginning with 1992-93 award year. Paragraphs (c)(1) and (d)(1) amended August 27, 1992, effective November 7, 1992.

Sec. 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that the information included on the application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the institution may not—

(i) Disburse any Pell Grant, Campus-based, or need-based ICL program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's Stafford Loan application or process Stafford Loan proceeds for any previously certified Stafford Loan application.

(2) If an institution does not have reason to believe that the information included on an application is inaccurate prior to verification, the institution—

(i) May withhold payment of Pell Grant, campus-based, and need-based ICL funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, Perkins Loan, NDSL, SEOG or need-based ICL funds for the applicant's first payment period; and

(B) May employ or allow an employer to employ an eligible student under the CWS Program for the first 60 consecutive days after the student's enrollment in that award year; and

(iii)(A) May withhold certification of the applicant's Stafford Loan application; or

(B) May certify the Stafford Loan application provided that the institution does not process Stafford Loan proceeds.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii)(A) or (B) of this section, it is liable for any overpayment discovered as a result of the verification process to the extent that the overpayment is not recovered from the student.

(c) An institution may not withhold any Stafford Loan proceeds from a student under paragraph (a)(2) of this section for more than 45 days. If the applicant does not complete the verification process within the 45 day period, the institution shall return the proceeds to the lender.

(d)(1) If the institution receives Stafford Loan proceeds in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the institution shall process the proceeds and advise the lender to reduce the subsequent disbursements.

(2) If the institution receives Stafford Loan proceeds in an amount which exceed the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for the applicable loan period, the institution shall return the excess proceeds to the lender.

(Authority: 20 U.S.C. 1094)

Note: Section 668.58 amended December 2, 1991, effective beginning with 1992-93 award year. Paragraph (a)(1)(i) amended August 27, 1992, effective November 7, 1992.

Sec. 668.59 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a)(2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (Pell Grant Index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported Pell Grant Index (PGI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's Pell Grant Index remains at zero on the basis of the verified information and the applicable "Zero PGI Chart" published by the Secretary.

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, recalculate an applicant's EFC, or adjust an applicant's Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a)(2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Recalculate the applicant's Pell Grant award on the basis of the EFC on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides the institution with the corrected SAR and only to the extent that additional funds are payable based on the recalculation.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in Sec. 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the correct SAR.

(c) For the campus-based, need-based ICL and Stafford Loan programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's EFC; and

(ii) Adjust the applicant's financial aid package for the campus-based, need-based ICL, and Stafford Loan programs to reflect the new EFC if the new EFC results in an overaward

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of campus-based or need-based ICL funds or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors in dollar items of less than $800; or

(d) If the institution selects an applicant for verification for an award year who previously received a loan under the Stafford Loan Program for that award year, and as a result of verification the loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in Sec. 668.61(b).

(e) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot do so, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094)

Note: Section 668.59 amended December 2, 1991, effective with 1992-93 award year. Paragraphs (a)(3)(ii) and (c)(2)(ii) amended August 27, 1992, effective November 7, 1992.

Sec. 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in Sec. 668.57 that are requested by the institution or the Secretary.

(b) For purposes of the campus-based, Stafford Loan and need-based ICL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution or by the Secretary—

(i) The institution may not—

(A) Disburse any additional Perkins Loan, NDSL, SEOG or need-based ICL funds to the applicant;

(B) Continue to employ or allow an employer to employ the applicant under CWS;

(C) Certify the applicant's Stafford Loan applications; or

(D) Process Stafford Loan proceeds for the applicant;

(ii) The institution shall return to the lender any Stafford Loan proceeds that otherwise would be payable to the applicant; and

(iii) The applicant shall repay to the institution any Perkins Loan, NDSL, or SEOG, or need-based ICL payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding paragraph (b)(1)(i) of this section; and

(3) An institution may not withhold any Stafford Loan proceeds from an applicant under paragraph (b)(1)(i)(D) of this section for more than 45 days. If the applicant does not complete verification within the 45-day period, the institution shall return the Stafford Loan proceeds to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**. If a verified SAR is submitted to the institution during the established additional time period, and the PGIs on the two SARs are different, payment must be based on the higher of the two PGIs.

(2) If the applicant does not provide the requested documentation, and if necessary, a verified SAR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, need-based ICL or Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing the verification process without completing that process, and the deadline is in the subsequent award year, the institution may not—

(1) Make any further disbursements on behalf of the applicant;

(2) Certify that applicant's Stafford Loan application or process that applicant's Stafford Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under Sec. 668.58 (a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

Note: Section 668.60 amended December 2, 1992, effective with 1992-93 award year.

Sec. 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under Sec. 668.58 (a)(2)(ii)(A) more financial aid than the applicant was eligible to receive, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Pell Grant, Perkins Loan, NDSL, SEOG, or need-based ICL funds to the applicant.

(b) If the institution determines as a result of the verification process that an applicant received Stafford Loan proceeds for an award year in excess of the student's financial need for the loan, the institution shall withhold and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid received by the student. However, instead of returning the entire undelivered disbursement, the school may choose to return promptly to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution shall provide the lender with a written statement describing the reason for the returned loan funds.

(Authority: 20 U.S.C. 1094)

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Note: Section 668.61 amended December 2, 1991, effective with 1992-93 award year. Paragraph (b) amended August 27, 1992, effective November 8, 1992.

Subpart F-Misrepresentation

Source: 51 FR 43324, Dec. 1, 1986, unless otherwise noted.

Sec. 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

Sec. 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State, or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(k) The nature of extent of any prerequisites established for enrollment in any course; or

(l) Any matters required to be disclosed to prospective students under Sec. 668.44 of this part.

(Authority: 20 U.S.C. 1094)

Sec. 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(Authority: 20 U.S.C. 1094)

Sec. 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(Authority: 20 U.S.C. 1094)

Sec. 668.75 Procedures

(a) On receipt of a written allegation or complaint from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in Sec. 668.81 reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV, HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

(Authority: 20 U.S.C. 1094)

Subpart G-Fine, Limitation, Suspension and Termination Proceedings

Source: 51 FR 43325, Dec. 1, 1986, unless otherwise noted.

Sec. 668.81 Scope and special definitions.

(a)(1) This subpart establishes regulations for the following actions with respect to a participating institution:

(i) An emergency action.

(ii) The imposition of a fine.

(iii) The limitation, suspension, or termination of the participation of the institution in a title IV, HEA program.

(2) A "participating institution" is an institution that the Secretary has—

(i) Determined meets the applicable requirements of 34 CFR part 600; and

(ii) Certified to satisfy initially the factors of financial responsibility and standards of administrative capability contained in subpart B of this part.

(b) This subpart applies to an institution which violates any Title IV, HEA program statute, regulation, special arrangement, agreement or limitation prescribed under authority of Title IV of the HEA;

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location or educational program because it fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the title IV, HEA program for which a designation of eligibility is sought; or

(2)(i) An institution fails to qualify for initial certification to participate in any title IV, HEA program because the institution does not meet the factors of financial responsibility or standards of administrative capability contained in subpart B of this part; or

(ii) A participating institution that seeks to have included within its certification an additional location fails to meet those factors or standards with respect to that additional location.

(3) An institution fails to qualify for initial certification to participate in any Title IV, HEA program because it does not meet the fiscal and administrative standards set forth in Subpart B of this part.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to an institution (i.e., advance payments and payments by way of reimbursements) participating under any Title IV, HEA program.

(e) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1954 (42 U.S.C. 2000d-4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title DC of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 et. seq.	45 CFR Part 90.

(f) The following definitions apply to this subpart:

Designated department official: An ED official to whom the Secretary has delegated responsibilities indicated in this subpart.

Initiating official: The designated Department of Education official authorized to begin an emergency action under §668.83.

Show-cause official: The designated Department of Education official authorized to conduct a show-cause proceeding for an emergency action under §668.83.

(Authority: 20 U.S.C. 1094)

Note: (a), (c)(2), and (f) amended March 10, 1993, effective April 28, 1993.

Sec. 668.82 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

(d)(1) An institution violates its fiduciary duty if—

(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(2) A violation for a reason contained in paragraph (d)(1) of this section of an institution's fiduciary duty is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

(Authority: 20 U.S.C. 1070 et seq.)

(e)(1) The debarment of a participating institution under Executive Order (E.O.) 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, terminates the institution's eligibility to participate in the Title IV HEA programs for the duration of the debarment.

(2)(i) The suspension of a participating institution under E.O. 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, suspends the institution's eligibility to participate in the Title IV, HEA programs.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(3)(i) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(ii) The Secretary initiates a fine, limitation, suspension, or termination action under 34 CFR Part 668, Subpart G, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554-557.

(Authority: E.O. 12549; 20 U.S.C. 1082 (a)(1) and (h)(1), 1094(c)(1)(D), 3474)

Sec. 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold title IV, HEA program funds from an institution or its students; and

(2)(i) Withdraw the authority of the institution to commit, disburse, deliver, or cause the commitment, delivery, or disbursement of title IV, HEA program funds; or

(ii) Withdraw the authority of the institution to commit, disburse, deliver, or cause the commitment, delivery, or disbursement of title IV, HEA program funds except in accordance with a particular procedure.

(b)(1) The initiating official begins an emergency action against an institution by sending the institution a notice by registered mail, return receipt requested. The initiating official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action to the institution, and that the institution may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) The initiating official takes emergency action against an institution only if that official—

(i) Receives information, determined by the official to be reliable, that the institution is violating any statutory provision of or applicable to title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation;

(ii) Determines that immediate action is necessary to prevent misuse of title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate the participation of the institution in one or more title IV, HEA programs.

(2) Examples of violations of a title IV, HEA program requirement that cause misuse and the likely loss of title IV, HEA program funds include—

(i) Causing the commitment, delivery, or disbursement by any party of title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Stafford Loan, PLUS, and SLS program loan if the institution had made a refund allocable to that loan in the amount and at the time required;

(ii) Using or offering to make available title IV, HEA funds for educational services if—

(A) The institution or its agents have made a substantial misrepresentation as described in 34 CFR 668.72, 688.73 or 668.74 related to those services; or 668.74 related to those services; or

(B) The institution lacks the administrative or financial ability to provide those services in full, or to compensate by appropriate refund for any portion of the educational program not completed by the student.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action against an institution's participation in a title IV, HEA program becomes effective, an institution may not—

(i) Make or increase awards or make other commitments of aid to students under the applicable title IV, HEA program;

(ii) Disburse either program funds or institutional funds as assistance to a student under that title IV, HEA program; or

(iii)(A) Certify an application for a loan under the Stafford Loan, PLUS, or SLS Loan programs;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution to commit, deliver, or disburse title IV, HEA program funds except in accordance with a particular procedure specified in the notice of emergency action, the institution may not take any action described in paragraph (d)(1)(i), (ii), or (iii) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution, the Secretary provides the institution, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of title IV, HEA program funds; or

(iii) The institution will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution and the initiating official.

(6) The show-cause official notifies the institution of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action submitted by the institution. The show-cause official may explain that determination by adopting or modifying. the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in §668.90(c) or (f), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

Note: Section 668.83 amended March 10, 1993, effective April 28, 1993.

Sec. 668.84 Fine proceedings.

(a) Scope and consequences. The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) Procedures. (1) A designated department official begins a fine proceeding by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which must be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives by that date a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with Sec. 668.88.

(c) Expedited hearings. With the approval of the hearing official and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: (b)(4) and (c) amended October 19, 1992, effective December 3, 1992.

Sec. 668.85 Suspension proceedings.

(a)(1) Scope and consequences. The Secretary may suspend the eligibility of an institution to participate in any or all of the Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any provision of any regulation or agreement implementing that Title.

(2) The suspension may not exceed 60 days unless—

(i) The institution and the Secretary agree to an extension if the institution has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under Sec. 668.86.

(b) Procedures. (1) A designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives by that date a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) A hearing official conducts a hearing in accordance with Sec. 668.88.

(c) Expedited hearings. With the approval of the hearing officer and the consent of the designated department official and the institution, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: (b)(4) amended October 19, 1992, effective December 3, 1992. New paragraph (c) added December 17, 1992, effective January 31, 1993.

Sec. 668.86 Limitation or termination proceedings.

(a) Scope and consequences. The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in Sec. 668.93 and 668.94, respectively.

(b) Procedures. (1) A designated department official begins a limitation or termination proceeding by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and, in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) A hearing official conducts a hearing in accordance with Sec. 668.88.

(c) Expedited hearing. With the approval of the hearing official and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: (b)(4) and (c) amended October 19, 1992, effective December 3, 1992.

Sec. 668.87 Pre-hearing conference.

(a)(1) A pre-hearing conference shall be convened by the hearing official if he or she thinks that such a conference would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the hearing official, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

Note: (a)(1) and (b) amended October 19, 1992, effective December 3, 1992.

Sec. 668.88 Hearing.

(a) A hearing is an orderly presentation of arguments and evidence conducted by a hearing official.

(b) The hearing process may be expedited as agreed by the hearing official, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A stipulation by the parties to facts and legal authorities not in dispute; or

(4) A review limited to the written record.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The hearing official accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(Authority: 20 U.S.C. 1094)

Note: heading, (a), (b), and (c)(4) amended October 19, 1992, effective December 3, 1992. Paragraphs (b)(3) and (b)(4) amended December 17, 1992, effective January 31, 1993.

Sec. 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The hearing official is not authorized to issue subpoenas.

(2) If requested by the hearing official, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(Authority: 20 U.S.C. 1094)

Note: heading, (a), (b)(1), (b)(2), and (c) amended October 19, 1992, effective December 3, 1992.

Sec. 668.90 Initial and final decisions—Appeals.

(a)(1) The hearing official shall issue a written initial decision to the institution and the designated department official by certified mail, return receipt requested, by the latest of the following dates:

(i) The 30th day after the last submission is filed.

(ii) The 60th day after the last submission is filed if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(iii) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2) The hearing official's decision must state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution, the hearing official may, if appropriate, issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the owner of the institution itself or the chief executive officer of the institution was convicted of, or pled guilty to, a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the hearing official must find that termination of the institution's eligibility to participate in the Title IV, HEA program is warranted;

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(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under Sec. 668.13, the hearing official must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable;

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in Sec. 668.15(b)(1) of this part, if the hearing official finds that the institution's Stafford loan and SLS cohort default rate, as defined in Sec. 668.15(f) of this part, meets the conditions specified in Sec. 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the hearing official shall find that the sanction sought by the designated Department official is warranted, except that the hearing official shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part;

(iv) In a termination action taken against an institution based on the grounds that an institution has failed to comply with the requirements of Sec. 668.23(c)(4), the hearing official must find that the termination is warranted; or

(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under Sec. 668.13(c)(5), the hearing official must find that the termination is warranted unless the institution demonstrates that all applicable conditions described in Sec. 668.13(d)(3) have been met.

(4) The hearing official shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted by written submissions, findings of fact must be agreed to by the parties.

(b)(1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension may not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In that case, the period may be extended until the completion of that proceeding including any appeal to the Secretary.

(c)(1) In a fine, limitation or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless, within that 20 day period, the institution or the designated department official appeals the decision to the Secretary.

(2)(i) A party appeals to the Secretary by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(3) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after it receives the appellant's brief or written statement.

(d)(1) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at the hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(2) Neither party may introduce new evidence on appeal.

(e) The initial decision of the hearing official imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal.

(f)(1) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (f) of this section.

(2) In rendering that decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) If the hearing official finds that the termination is warranted pursuant to §668.90(a)(3)(i), the Secretary affirms that decision. In any other case, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Authority: 20 U.S.C. 1082, 1094)

(Approved by the Office of Management and Budget under control number 1801-0003)

Note: (a)(3)(iii) amended July 19, 1991, effective September 2, 1991. Paragraphs (a)(3)(i) through (a)(3)(iii) amended and new paragraphs (a)(3)(iv) and (v) added July 31, 1991, effective September 14, 1991. Paragraphs (a)(1), (a)(1)ii), (a)(1)(iii), (a)(2), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(3)(iv), (a)(3)(v), (a)(4), (b)(1), (c)(1), (c)(2), (d)(1), (e), and (f)(3) amended October 19, 1992, effective December 3, 1992. OMB control number revised March 16, 1993, effective March 16, 1993. Section 668.90 amended December 17, 1992, effective March 16, 1993.

Sec. 668.91 Filing of requests for hearings and appeals; verification of mailing and receipt dates.

(a) Filing of request for hearing, show-cause opportunity, or appeal.

(1) A request by an institution for a hearing or show-cause opportunity, other material submitted by an institution in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the Department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing by facsimile transmission must confirm that a complete and legible copy of the document was received by that official to provide a hard copy of the documents filed by facsimile.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4) If agreed upon by the parties, service of a document required to be served on another party may be made upon the other party by facsimile transmission.

(b) Verification of mailing and receipt dates. (1) The date on which a notice from a designated department official initiating an action under this subpart is regarded as mailed is the date of mailing evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is regarded as received is, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

(c) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that institution refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

Note: (a) and (b) redesignated (b) and (c), respectively; heading amended; and new paragraph (a) added March 10, 1993, effective April 28, 1993.

Sec. 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

Note: (a) amended October 19, 1992, effective December 3, 1992.

Sec. 668.93 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds; or

(d) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

Sec. 668.94 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Stafford Loan, PLUS or SLS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the Stafford Loan, PLUS or SLS programs (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements):

(b) After its participation in a title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the

institution only in accordance with §668.25 and with any additional requirements imposed under this part.

(Authority: 20 U.S.C. 1094)

Note: (b) amended and (c) removed March 10, 1993, effective April 28, 1993.

Sec. 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, hearing official or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, which the institution improperly received, withheld, disbursed or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Stafford Loan, PLUS or SLS programs—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

(Authority: 20 U.S.C. 1094)

Note: (b)(1)(ii) amended July 31, 1991, effective September 14, 1991. Paragraph (a) amended October 19, 1992, effective December 3, 1992.

Sec. 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b) In order to be reinstated, an institution must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution has improperly received, withheld, disbursed or caused to be disbursed;

(2) Meet all the requirements for participation included in Subpart B; and

(3) Enter into a new participation agreement with the Secretary.

(c) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

(Authority: 20 U.S.C. 1094)

(Approved by OMB under control #1840-0537)

Sec. 668.97 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary responds to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or established other limitation(s), the institution, upon request, is granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting does not waive its right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation(s) pending the outcome of the meeting.

(Authority: 20 U.S.C. 1094)

Sec. 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1801-0003)

Note: new Section 668.98 added December 17, 1992, effective March 16, 1993. OMB control number added March 16, 1993, effective March 16, 1993.

Subpart H-Appeal Procedures for Audit Determinations and Program Review Determinations

Sec. 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal of an institution from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). (The Title IV, HEA programs are listed in Sec 668.1(c)).

(b) This subpart applies to any institution (as defined in Sec. 668.1(b)) that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by Subpart G of this part or to a determination that—

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the Title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in Subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

(Authority: 20 U.S.C. 1094)

Sec. 668.112 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department to whom the Secretary has delegated the responsibilities referred to in this subpart.

"Final audit determination" means the written notice of a determination issued by a designated ED official based on an audit of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

"Final program review determination" means the written notice of a determination issued by a designated ED official and resulting from a program compliance review of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

(Authority: 20 U.S.C. 1094)

Sec. 668.113 Request for review.

(a) An institution seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated ED official issuing the final audit determination or final program review determination.

(b) The institution shall file its request for review and any records or materials admissible under the terms of Secs. 668.116 (e) and (f) of this subpart, no later than 45 days from the date it receives the final audit determination or final program review determination.

(c) The institution shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's position together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under Control Number 1840-0592)

Sec. 668.114 Notification of hearing.

(a) Upon receipt of an institution's request for review, the designated ED official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated ED official's receipt of an institution's request for review, the hearing official establishes a schedule for the submission of briefs by both the institution and the designated ED official.

(c) The submission of briefs and of accompanying evidence admissible under the terms of Secs. 668.116 (e) and (f) shall be scheduled to occur no later than 120 days from the date upon which the hearing official notifies the institution under paragraph (b) of this section.

(Authority: 20 U.S.C. 1094)

Note: (a), (b), and (c) amended October 19, 1992, effective December 3, 1992.

Sec. 668.115 Prehearing conference.

(a) In the event that the hearing official considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of—

(1) A telephone conference call;

(2) An informal meeting of the parties with the hearing official; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

(Authority: 20 U.S.C. 1094)

Note: (a) and (b)(2) amended October 19, 1992, effective December 3, 1992.

Sec. 668.116 Hearing.

(a) A hearing is a process conducted by the hearing official whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution and by the designated ED official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the hearing official.

(d) An institution requesting review of the final audit determination or final program review determination issued by the designated ED official shall have the burden of proving the following matters, as applicable—

(1) That expenditures questioned or disallowed were proper;

(2) That the institution complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) ED audit reports and audit work papers for audits performed by the United States Education Department Office of Inspector General.

(ii) Institutional audit work papers, records, and other materials, if the institution provides those work papers, records, or materials to ED no later than the date by which it was required to file its request for review in accordance with Sec. 668.113.

(iii) ED program review reports and work papers for program reviews.

(iv) Institutional records and other materials provided to ED in response to a program review, if the records or

materials were provided to ED by the institution no later than the date by which it was required to file its request for review in accordance with Sec. 668.113.

(v) Other ED records and materials if the records and materials were provided to the hearing official no later than 3 days after the institution's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The hearing official shall accept only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence which shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution other than the institution bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the bringing the appeal in the program areas at issue in the appeal.

(g)(1) The hearing official may schedule an oral argument if he determines that an or argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated ED official shall make a transcribed record of the proceedings and shall make that record available to the institution upon its request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(h) Any oral argument shall take place in the Washington, D.C. metropolitan area.

(i) Either party may be represented by counsel.

(Authority: 20 U.S.C. 1094)

Note: heading (a), (b), (c), (e)(1), (e)(1)(v), (f), and (g)(1) amended October 19, 1992, effective December 3, 1992.

Sec. 668.117 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The hearing official is not authorized to issue subpoenas or compel discovery, as provided for in the Federal Rules of Civil Procedure.

(c) The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

Note: Section 668.117 amended October 19, 1992, effective December 3, 1992.

Sec. 668.118 Decision of the hearing official.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the hearing official issues a written decision.

(b) The hearing official's decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The hearing official bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

Note: Section 668.118 amended October 19, 1992, effective December 3, 1992.

Sec. 668.119 Appeal to the Secretary.

(a) Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 30 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

Note: (a) amended October 19, 1992, effective December 3, 1992. Paragraphs (a) and (d) amended December 17, 1992, effective January 31, 1993.

Sec. 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

(b) If the Secretary modifies, remands, or overturns the initial decision of the hearing official, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the hearing official for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

Note: Section 668.120 amended October 19, 1992, effective December 3, 1992. Paragraph (a) amended December 17, 1992, effective January 31, 1993.

Sec. 668.121 Final decision of the Department.

(a) In the event that the initial decision of the hearing official is appealed, the decision of the Secretary is the final decision of the Department, unless the hearing official's decision is remanded by the Secretary.

(b) In the event that the initial decision of the hearing official is not appealed within the time limit specified in Sec. 668.119 (a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

Note: Section 668.121 amended October 19, 1992, effective December 3, 1992.

Sec. 668.122 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

(Authority: 20 U.S.C. 1094)

Sec. 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or final program review determination, ED will take steps to collect the debt at issue or otherwise effect the determination that was the subject of the request for review.

(Authority: 20 U.S.C. 1082, 1094)

[FR Doc. 87-18352 Filed 8-11-87; 8:45 a.m.;]

Sec. 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a

copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1801-0003)

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Note: new Section 668.124 added December 17, 1992, effective March 16, 1993. OMB control number added March 16, 1993, effective March 16, 1993.

Subpart I—Immigration-Status Confirmation

Sec. 668.130 General.

(a) Scope and purpose. The regulations in this subpart govern the responsibilities of institutions and students in determining the eligibility of those noncitizen applicants for Title IV, HEA assistance who must, under §668.7(a)(4)(ii), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) Student responsibility. At the request of the Secretary or the institution at which an applicant for Title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under §668.7(a)(4)(ii) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of §668.7(a)(4)(ii).

Immigration status: The status conferred on a noncitizen under the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1182.

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document, or automated data generated by the Department of Education's central processing system as the result of processing the data provided in an Application for Federal Student Aid or multiple data entry application.

Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a multiple data entry application regarding the immigration status of a noncitizen applicant for Title IV, HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of §668.7(a)(4)(ii) and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, in response to the submission of INS Document Verification Form G-845 by an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student's immigration status and the validity of the submitted INS documents, and reports the results of this search to the institution.

(Authority: 20 U.S.C. 1091)

Sec. 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in §668.133(a)(1)(ii), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that—

(1) The INS has confirmed the student's immigration status; and

(2) The student's immigration status meets the noncitizen eligibility requirements of §668.7(a)(4)(ii).

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(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under §668.7(a)(4)(ii).

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) General requirements. Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under §668.7(a)(4)(ii) and request the INS to perform secondary confirmation for a student claiming eligibility under §668.7(a)(4)(ii), in accordance with the procedures set forth in §668.135, if—

(1) The institution—

(i) Receives an output document indicating that the student must provide the institution with evidence of the student's immigration status required under §668.7(a)(4)(ii); or

(ii) Receives an output document that satisfies the requirements of §668.132(a) (1) and (2), but the institution—

(A) Has documentation that conflicts with immigration-status documents submitted by the student or the immigration status reported on the output document; or

(B) Has reason to believe that the immigration status reported by the student or on the output document is incorrect; and

(2) The institution determines that the immigration-status documents submitted by the student constitute reasonable evidence of the student's claim to be an eligible noncitizen.

(b) Exclusions from secondary confirmation. An institution may not require the student to produce the documentation required under §668.7(a)(4)(ii) and may not request that INS perform secondary confirmation, if—

(1) The student—

(i) Demonstrates U.S. citizen or national status; or

(ii) Demonstrates eligibility under the provisions of §668.7(a)(4)(iii) or (iv); and

(2) The institution does not have conflicting documentation or reason to believe that the student's claim of citizenship or immigration status is incorrect.

(Authority: 20 U.S.C. 1091, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993.

Sec. 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof and securing confirmation of the immigration status of applicants for Title IV, HEA student financial assistance who claim to meet the eligibility requirements of §668.7(a)(4)(ii). These policies and procedures must include—

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of §668.7(a)(4)(ii);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until the institution has provided the student the opportunity to submit the documentation in support of the student's claim of eligibility under §668.7(a)(4)(ii).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation—

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of §668.7(a)(4)(ii); and

(2) A clear explanation of the student's responsibilities with respect to the student's compliance with §668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in §668.137.

(Authority: 20 U.S.C. 1091, 1092, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993.

Sec. 668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentary evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall—

(a) Complete the request portion of the INS Document Verification Request Form G-845;

(b) Copy front and back sides of all immigration-status documents received from the student and attach copies to the Form G-845; and

(c) Submit Form G-845 and attachments to the INS District Office.

(Authority: 20 U.S.C. 1091, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993.

Sec. 668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has requested secondary confirmation under §668.133(a) shall make its determination concerning a student's eligibility under §668.7(a)(4)(ii) by relying on the INS response to the Form G-845.

(b) An institution shall make its determination concerning a student's eligibility under §668.7(a)(4)(ii) pending the institution's receipt of an INS response to the institution's Form G-845 request concerning the student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 business days have elapsed from the date that the institution sent the Form G-845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration-status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution shall establish and use policies and procedures to ensure that, if the institution has disbursed or released Title IV, HEA funds to the student in the award year or employed the student under the Federal Work-Study Program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of §668.7(a)(4)(ii). The deadline, set by the institution, must be not less than 30 days from the date the institution receives the student's output document.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any Title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; or certify a Federal Stafford, Federal PLUS, or Federal SLS loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.138 Liability

(a) A student is liable for any SSIG, Federal SEOG, or Federal Pell Grant payment and for any Federal Stafford, Federal SLS, or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS loan borrower is liable for any Federal PLUS loan made to him or her on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution followed the provisions in this subpart and relied on—

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for Title IV, HEA assistance;

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents provided in response to the institution's request for secondary confirmation; or

(3) Immigration-status documents submitted by the student and the institution did not have reason to believe that the documents did not support the student's claim to be an eligible noncitizen.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any Title IV, HEA disbursements made to this student during the award year or period of enrollment for which the student applied for Title IV, HEA assistance.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.139 Recovery of payments and loan disbursements to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Federal Perkins loan to an ineligible student for which it is not liable in accordance with §668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Federal Perkins loan.

(b) If an institution causes a Federal Stafford, Federal SLS, or Federal PLUS loan to be disbursed to an ineligible student or Federal PLUS loan borrower for which it is not liable in accordance with §668.138, it shall assist the Secretary in recovering the funds by notifying the lender that

the student has failed to establish eligibility under the requirements of §682.201(d).

(c) If an institution is liable for payment of a grant or Federal Perkins loan to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's Federal Perkins loan fund or Federal Pell Grant, Federal SEOG, or SSIG amount, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Federal Stafford, Federal SLS, or Federal PLUS loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the Federal Stafford, Federal SLS, or Federal PLUS lender and provide written notice to the borrower.

(Authority: 20 U.S.C. 1091, 1094)

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Appendix A to Part 668 [Reserved]

[FR Doc. 91-18052 Filed 7-30-91: 8:45 am]

Appendix B-Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Part III Chapter 3-Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.\1\

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

\1\If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objective or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.\2\

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures or the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial of opportunity to obtain explanations by officials and employees of the governmental organizations, program, or activity under audit.

\2\Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditor's judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

Appendix C-Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."\1\

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

Appendix D-Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the Stafford Loan and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under Sec. 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

\1\Letter (B-148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a pro rata refund policy, as defined in 34 CFR 682.606(b)(2) and (c).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Stafford Loan or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a Stafford Loan or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of Stafford and SLS loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the Stafford Loan and SLS programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

(i)(A) General information on the average indebtedness of student borrowers who have obtained Stafford Loan or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on Stafford Loan and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (e.g., loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a Stafford Loan or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

Appendix-Summary of Comments and Responses

June 5, 1989 Federal Register

Section 668.15 Additional factors for evaluating administrative capability.

Comments: The majority of commenters objected to the provisions in this section that would authorize the initiation of an LST action against a school with a GSL and SLS default rate greater than 20 percent. Many commenters objected to use of this criterion to eliminate a school from participation in all Federal student financial aid programs. They believed that this factor alone was not an adequate indicator of a school's administrative capability. Many commenters also believed that a school should have the option of implementing a default reduction plan to reduce its default rate prior to action by the Secretary to terminate the school.

Discussion: Several changes have been made. The Secretary has revised this section to implement a multi-tiered approach that authorizes the initiation of an LST action beginning in 1991 if the school's default rate exceeds 60% (this standard to be lowered to 40% in increments of 5% by 1995), or if that rate exceeds 40% and has not been reduced by an increment of at least 5% from the preceding year's rate. Under Sec. 682.604 and 682.606, schools with default rates over 30% would be subject to two mandatory default reduction measures—a pro rata refund policy and delayed certification of loan applications for first-time borrowers. Finally, under this section, schools with default rates over 20% would be required to implement default management plans established by the Secretary on a case-by-case basis, with components of the plan being drawn from Appendix D, recommendations of the school and guarantee agencies, and other sources. The school would be provided an opportunity for an informal hearing prior to imposition of a plan.

Comments: Several commenters disagreed with the use of a fiscal year default rate. They thought that a cumulative rate or a rate that reflected a longer time frame would be more equitable. Other commenters urged the use of a dollar-based rate, rather than a borrower-based rate, and a number of commenters urged that the rate take account of post-default collections. Some commenters also expressed concern about the quality of available data on defaults.

Discussion: No change has been made. The Secretary believes that using a fiscal year default rate is more equitable than using a cumulative rate because it does not penalize a school for a high default rate incurred before it took steps to reduce defaults. Indeed, the positive results of actions taken by a school to reduce its default rate would be readily evident from its fiscal year rates, but not from its cumulative rate.

Further, a default that takes place more than two years after the borrower leaves school is unlikely to be attributable to the actions of the school and should therefore not be charged to the school.

A borrower-based rate has been retained in preference to a dollar-based rate to avoid numerous technical issues inherent in the latter approach, such as the calculation of outstanding balances, attribution of payments, capitalization of interest, and the like. A dollar-based rate would also tend to unfairly and artificially reduce the rates for longer programs, since graduates of those programs have loan balances that are much larger, relative to the loan balances of default-prone dropouts, than the graduates of shorter programs. Recognizing past problems with the quality of default-related data submitted to the Department by guarantee agencies, the Secretary has recently revised the reporting requirements for guarantee agencies to ensure that the data collected from all guarantee agencies on which actions would be taken under these regulations is both accurate and complete.

Comments: One commenter asked how deferments are treated in the default rate calculation.

Discussion: No change has been made. It is the entry of a loan into repayment that is relevant to the default rate calculation. Subsequent deferments are considered as falling within the repayment period. The end of a deferment period does not result in the borrower "entering repayment," even though the duty to make payments resumes at that time, since the borrower is considered to have been in repayment throughout the deferment period. Thus, a deferment granted a borrower after entering repayment on a loan in a given fiscal year is ignored in calculating the school's rate for that fiscal year. This is necessary both because not all deferments appear on the "tape dump" (the current source of the Secretary's default information) and because a default by a borrower after leaving deferment status may be too removed in time from the borrower's attendance at the school to be fairly charged to the school.

Comments: Many commenters claimed that it is unfair to place the burden of proof on the school to justify a high default rate. One commenter representing numerous lenders supported placing the burden of proof on the school, but recommended that a 50% default rate be used to trigger this rather than the 20% rate proposed in the NPRM. Many commenters objected to excluding the composition of the student body as an acceptable explanation for a high default rate. Other commenters wanted schools to have the option to deny certification of a loan, as well as require cosigners or credit checks for borrowers, to enable them to refuse loans to likely defaulters.

Discussion: A change has been made. Section 668.90 has been revised to clarify the defense that may be used to avoid LST sanctions. The Secretary believes that the burden of proof is appropriately placed on the school to demonstrate its administrative capability when a high default rate gives rise to a strong inference that this capability is lacking. At the high default rates specified in the final rule, this inference clearly arises. The recommendation that schools be allowed to require cosigners or credit checks, and to refuse to certify applications for otherwise eligible Stafford and SLS borrowers, would require legislative changes to implement, and thus are beyond the scope of these regulations.

Comments: Several commenters were disturbed by the possibility that schools with very few borrowers would be subject to sanctions based on their default rates.

Discussion: A change has been made. The Secretary recognizes that schools with very few borrowers could be placed at a disadvantage if they are judged under the default rate formula outlined in the NPRM, so he has revised that provision to evaluate a school with 30 borrowers or less entering repayment in a fiscal year based on a "rolling" three-year average default rate. In addition, it should be noted that an LST action allowed by this regulation against high default rate schools is not mandatory, and could be declined if a school's default volume is so low that the Department's resources would be more effectively employed in other ways.

Comments: A number of commenters recommended that the default rate calculation not treat as defaults, loans on which the borrowers begin or resume repayment after default.

Discussion: No change has been made. The fiscal year default rate is designed to yield information as to a school's performance in default-related matters. The use of post-default collection information would reduce the usefulness of the rate for this purpose by introducing factors unrelated to a school's default-related performance, such as the guarantor's effectiveness in collecting defaulted loans.

Comments: Several commenters asked whether a school would be given "credit" for defaulted loans that are purchased by that institution.

Discussion: A change has been made. The Secretary believes that a payment made by a school or related party to avoid a default is not an appropriate basis for excluding a loan from a school's default rate, and has revised this section to reflect that position.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

Comments: A number of commenters suggested that it would be inappropriate and unfair to establish, under proposed Sec. 668.22(a)(3)(i) and (ii), two distinct refund attribution formulas—one for GSL, SLS, and PLUS loan recipients, and one for other students.

Discussion: A change has been made. Since the proposed revisions to Sec. 668.22 were based on the application of a pro rata requirement to all schools, these regulations do not revise current Sec. 668.22. Pursuant to Sec. 682.606(b)(2) of these final regulations, a school is required to adopt a pro rata refund policy as one of two "core" default reduction measures only if its default rate exceeds 30%, and then only for certain borrowers and academic periods.

Section 668.44 Institutional information

Comments: A number of commenters suggested that the disclosures required by Sec. 668.44 (c) through (f) of the NPRM should be reserved for institutions having "unacceptable" default rates. Many commenters agreed that the disclosures are needed, but suggested that they apply to all programs and all schools. Several commenters supported the Secretary's proposal to target these disclosures to vocational training programs, particularly given the

aggressive marketing techniques employed by many trade and technical schools.

Discussion: No change has been made. While the provisions of current Sec. 668.44 (a) and (b) are applicable to all schools, the Secretary believes that the dropout rate, placement rate, and State licensing examination pass rate disclosures, specified in Sec. 668.44 (c) through (f), should be mandated only for a school that offers either an undergraduate non-baccalaureate trade program or another program (whether or not undergraduate non-baccalaureate) for which it makes a claim regarding job placement in order to attract prospective students. As stated in the preamble to the NPRM, the Secretary believes that adequate and accurate information on these matters is of critical importance to prospective students evaluating the quality of such programs. It should be noted that the provisions of Sec. 668.44 (c) through (f) would not apply to a program that is primarily intended as preparatory for, and acceptable towards, a baccalaureate or equivalent level degree (e.g., Associate of Arts degree programs offered by community colleges), as distinguished from a course of study designed to provide a complete vocational training program.

Comments: Many commenters expressed concerns about the administrative burden imposed by the information collection and disclosure activities required by Sec. 668.44 (c) through (e), and by the requirement that a school utilize and maintain the forms required by Sec. 668.44(f) and Appendix A to Part 668. As a result a number of commenters recommended that the disclosures specified in the NPRM only be required of schools having unacceptable default rates.

Discussion: No change has been made. By statute, a school must disclose dropout rate, placement rate, and State licensing examination rate information for any programs as to which the school makes a marketing claim regarding job placement. See section 487(a)(8) of the HEA. This requirement applies to high default and low default schools alike. Given the fact that undergraduate nonbaccalaureate vocational training programs are marketed and purchased almost exclusively for their value in imparting employable vocational skills, the intent of section 487(b)(8) can be achieved only if the information listed in Sec. 668.44 (c) through (f) is disclosed for each program of that type. Moreover, it is apparent that the market forces that should operate to reward effective programs and weed out the ineffective ones are not currently working. The Secretary believes that more informed consumer choice will do much to correct that problem, and thereby substantially reduce defaults, but this can only be accomplished if consumers have access to the information required under these provisions for all programs of this nature, good and bad. The Secretary, in Sec. 668.44(f), has also specified that the required information described in Sec. 668.44(c)(2) through (4) be disclosed to prospective students using the "track record" disclosure forms contained in Appendix A. The Secretary believes that the use of a standardized form, in an easy-to-read format and in language that can be readily understood by all students, will greatly enhance a prospective student's ability to fully consider the information provided, and to compare the various programs in which he or she may be interested.

Comments: One commenter indicated that a variety of factors could affect the decision of a graduate not to seek employment in the occupation for which the training was offered by the school. The commenter argued that the job placement rate calculation specified in Sec. 668.44(c)(3) should exclude these graduates.

Discussion: A change has been made. The Secretary agrees that there may be valid reasons why a graduate of a program does not seek employment in the occupation for which the training was offered. Section 668.44(c)(3) of these final regulations has been revised to allow a school to note in its disclosure the number of graduates who state in writing that they have chosen not to seek employment in the occupation for which they were trained. However, this provision does not allow the school to include a graduate who discontinues seeking such employment after an unsuccessful search.

Comments: One commenter recommended that the "completion rate" calculation in Sec. 668.44(c)(4) include as completions borrowers who leave school to accept employment in the occupation for which the training was offered.

Discussion: A change has been made. Section 668.44(c)(4) has been revised to include as completions in the completion rate calculation those students who have not successfully completed the program (i.e., graduated), but who have obtained full-time employment in the occupation for which the training was offered within 150% of the normal time for completion of the program.

Comments: One commenter suggested that, in using the documents specified in Appendix A to Part 668, as required by Sec. 668.44(f), accommodation should be made for institutions that serve largely Spanish-speaking populations.

Discussion: A change has been made. Section 668.44(f) has been revised to permit the use of a foreign language version of the forms for students whose primary language is not English.

Comments: One commenter recommended that the Secretary, as part of these default reduction measures, require lenders to disclose to borrowers information about the role that secondary markets play in the GSL, SLS, and PLUS programs. The commenter also suggested that lenders be required to give notice to the guarantor, the school, and the student whenever a loan is sold or transferred to another eligible lender.

Discussion: No change has been made. While the Secretary agrees with the concerns expressed by the commenter, the suggestions are not within the scope of the final regulations. A separate NPRM, in which these issues will be addressed, is currently under development.

Section 668.90 Initial and final decisions—appeals

Comments: The comments received for this section mirrored the comments made under Sec. 668.15. The major issues addressed by commenters were the use of a 20% default rate as a trigger to limit, suspend, or terminate an institution from participation in all Title IV programs, the use of a fiscal year default rate, and the relevance of the composition of a school's student body.

Discussion: A change has been made. These issues have been addressed in the preamble and elsewhere in this

Appendix. This section has been revised to include the elements of the Appendix D defense that a school may prove to avoid LST sanctions. This defense prevents termination of a school if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668.

Appendix D—Default Reduction Measures

Comments: The Secretary received broad support for the idea that a school with a high default rate should adopt default reduction measures such as those contained in Appendix D. A number of school commenters noted that many of these measures were already part of the standard procedures. Many commenters were concerned about the administrative burden that would be imposed on a school performing some of these measures.

Discussion: A change has been made. To assist schools in identifying those measures appropriate for their circumstances, the Secretary has grouped the measures according to the cause of default that each is meant to address. Any school with a default rate over 20% could be required to implement a default management plan containing some of the measures in Appendix D, as well as other appropriate default reduction steps. These steps would also be selected to address the school's circumstances. In this manner, the Secretary and the school will be able to select those measures that require only the administrative effort necessary to adequately and efficiently address the school's particular causes of default.

Comments: One commenter was concerned that a school might be prohibited by State law from withholding an academic transcript of a former student. Another commenter argued that withholding a transcript would be counterproductive because, in the case of a student seeking employment, denying a request from a prospective employer for an academic transcript would prevent the borrower from acquiring a job, perhaps preventing the borrower from repaying the loan.

Discussion: A change has been made. The Secretary concurs with the objections raised and has deleted this measure from the final regulation.

Comments: Several commenters expressed concern over the suggestion in Appendix D that schools revise admission policies, as these policies, in the case of community colleges, are sometimes mandated by the State.

Discussion: A change has been made. The final regulation specifies that the school should revise its admissions policies in a manner that is consistent with applicable State law.

Comments: Many commenters requested clarifications about the applicability of the Fair Debt Collection Practices Act (FDCPA) to a school that followed the recommendation that it contact a borrower during his or her grace period or after the school received a copy of the lender's preclaims assistance request to urge the borrower to repay the loan.

Discussion: No change has been made. This provision specifies that the school's actions must be consistent with the FDCPA. The authority to interpret the FDCPA rests with the Federal Trade Commission (FTC), not with the Department of Education. In a letter from FTC's Division of Credit Practices to Louise G. Trubek, Executive Director, Center for Public Representation, dated September 12, 1988, the FTC indicated that pre-default collection efforts are not covered by the FDCPA.

Comments: Some commenters argued that, without notification to the school from the lender or guarantee agency that a borrower has made payments to resolve a delinquency, the school might continue efforts to urge the borrower to make payments after the delinquency is resolved, thereby damaging the collectibility of the loan. Other commenters expressed a more general concern that poorly informed or timed collection efforts by schools would do more harm than good.

Discussion: No change has been made. As noted in the NPRM, this default reduction step should be taken in cooperation with the lender to avoid confusing the borrower or damaging the collectibility of the loan. A school should always note in its communications with the borrower that, if the borrower has made payments to cure a delinquency, the school's notice should be ignored.

Comments: Several commenters supported the proposal that, under Sec. 668.90, a school with a default rate over 20%, to avoid an LST sanction, would have to justify not adopting the practice of delaying the certification of a borrower loan application so that the borrower's proceeds were not delivered to the borrower or credited to the borrower's account until the borrower had attended the institution for 30-45 days during the period for which the loan was made. One commenter suggested applying this as a requirement for high default schools with dropout or cancellation problems. Numerous other commenters objected to this measure, expressing concern that it would negatively affect borrowers who need the proceeds from the loan for living expenses, and would create cash-flow problems at some schools.

Discussion: A change has been made. Section 682.603(c) has been amended to require each school with a default rate over 30% to delay certification of the loan application of each student for his or her first GSL or SLS loan for attendance at the school. The Secretary believes that the potential benefit of this measure justifies requiring all schools with default rates over 30% to take this step.

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Section 668.12 Institutional participation agreement.

Comment: One commenter asked what is meant by the statement that a participation agreement becomes effective on the date executed by the Secretary. Three commenters suggested that when a participation agreement has expired, the effective date of a new participation agreement should be retroactive to the expiration date of the previous agreement, especially when there is a change in ownership. These commenters also expressed the opinion that because an institution undergoing an ownership change may not disburse Title IV, HEA funds after its agreement expires, the lack of a retroactive feature is unfair to students enrolled in that institution.

Response: A change has been made. The procedure under which an institution becomes eligible to participate in the Title IV, HEA programs is a two-step procedure. Under the first step, the Department of Education determines whether

the applicant institution satisfies the applicable statutory and regulatory definitions of an eligible postsecondary institution. Under the second step, the Department determines whether the institution is administratively capable and financially responsible under Sec. Sec. 668.13 and 668.14. If the Department determines that the institution qualifies under both steps, it sends the institution a participation agreement signed by the Secretary or the Secretary's designee. The institution had previously signed the agreement as part of the application process. While the date that the Secretary signs the agreement is the effective date of the agreement, as a practical matter that date only controls the disbursement of funds to students attending that institution. Thus, an institution may begin to disburse title IV, HEA program funds to its eligible students only on or after that date. However, the students may receive financial aid for the entire payment period in which the Secretary signed the participation agreement, even if the payment period began before the date of the Secretary's signature.

The circumstances surrounding the eligibility of an institution that changes ownership resulting in a change of control require special treatment. The Secretary has revised Sec. 668.12 to clarify how the effective date of a new participation agreement applies to an institution in that situation.

The participation agreement signed by an institution's previous owner expires on the date that the change of ownership resulting in a change in control takes place. To continue to participate in the Title IV, HEA programs, that institution must take steps to reaffirm its eligibility and its certification in order to be considered the same institution after the change. If the institution under its new ownership satisfies the Secretary regarding its eligibility to participate in the Title IV, HEA programs, the Secretary enters into a new participation agreement with the new owners of the institution.

When a new participation agreement is signed by the Secretary, the new owner may begin disbursing Title IV, HEA program funds. Since the Secretary considers that institution to be the same institution, the new owner ordinarily may disburse funds to students who were enrolled beginning with the payment period in which the change of ownership took place, even if that payment period ended before the Secretary signed the new agreement.

There is one exception to this disbursement procedure under the Pell Grant and campus-based programs, however. If the change of ownership that results in a change in control occurs in one award year and the Secretary signs the new participation agreement in another award year, the new owner may not make Pell Grant and campus-based disbursements for any payment period that does not occur at least partially in the award year in which the Secretary signs the agreement.

If a new institution is created by separating a part of an existing participating institution, but the new institution remains under the same ownership as the existing participating institution, students at the new institution may continue to receive financial aid under the participation agreement with the existing participating institution until the new institution enters into its own participation agreement with the Secretary. If, however, the new institution changes its ownership resulting in a change in control when it separates from the existing participating institution, the existing participation agreement ceases to apply to the new institution on the date that the ownership change takes place. The conditions that apply to other institutions undergoing ownership changes also apply to this new institution. This retroactive payment feature does not apply to an institution under new ownership if the institution's participation under its previous owner was terminated by the Secretary under the provisions of Subpart G of these regulations, since an institution so terminated may not reapply to participate in the Title IV, HEA programs for 18 months. The new owner of such an institution may only disburse funds for payment periods beginning with the payment period in which the new participation agreement is signed by the Secretary.

Section 668.14 Standards of administrative capability.

Comment: Many commenters felt that the proposal in the NPRM that institutions refer any instance of suspected fraud by a Title IV, HEA applicant to State or local law enforcement agencies for investigation was unclear. Several commenters were unsure what constituted application for aid under "false pretenses."

Response: A change has been made. Based on the concerns of the postsecondary educational community, including numerous comments received regarding a cross-reference to this requirement contained in the NPRM for Subpart E of the Student Assistance General Provisions published in the FEDERAL REGISTER on July 26, 1985, 50 FR 30674, the Secretary has clarified this requirement. Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under Sec. 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the information. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive. The Secretary has also included in these regulations several examples of possible areas in which an applicant may engage in fraud or other criminal misconduct: False claims of independent student status or citizenship, the use of false identities, the forgery of signatures or certifications, and false statements of income.

Comment: Several commenters stated that it would be impossible to define the circumstances under which the institution has clear evidence that an applicant's intent in reporting false information was fraudulent. For this reason, these commenters recommended that the requirement that institutions report instances of suspected fraud to law enforcement agencies be deleted.

Response: No change has been made. The Secretary recognizes that applicants often misreport information without having any intent to deceive. However, there are identifiable circumstances in which the institution would have reason to believe that an applicant has deliberately misreported information to increase his or her eligibility for Title IV, HEA assistance. For instance, when an applicant uses a false

identity to apply for assistance or alters official documents such as transcripts or the Student Aid Report, the institution would have reason to believe that these actions were intentional. The institution is not required to reach a firm conclusion as to the propriety of the applicant's actions but is required to refer the matter to the appropriate law enforcement agency or the Inspector General for investigation.

Comment: Many commenters noted that the NPRM did not specify the types of law enforcement agencies to which a referral should be made and questions whether State or local agencies were even aware of their possible involvement in and responsibility for those investigations. Several commenters suggested that the investigation of fraudulent applications for Federal student aid should properly be the concern of Federal enforcement agencies.

Response: A change has been made. Because of the different structure and responsibilities of law enforcement agencies within each State, it is not possible to specify any one type of organization to which referrals must be made in all States. Many institutions have an independent campus police force that is authorized to conduct investigations concerning the misuse of Federal funds. At the local level, the county police department or sheriff's office generally has jurisdiction in the case of misuse of Federal funds. In keeping with its responsibility to establish and coordinate relations with State and local law enforcement agencies, the Office of Inspector General for the Department of Education has conducted numerous training programs for State and local law enforcement officers on the Federal student financial assistance programs. However, in light of the differences among law enforcement agencies at the State and local level, the Secretary recognizes that there may be some cases in which no State or local agency has jurisdiction. The Secretary also recognizes that some State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has revised the section to permit an institution to make a referral either to the Office of Inspector General of the Department of Education or, if more appropriate, to State or local authorities.

Comment: Several commenters were concerned that an additional administrative burden would be placed upon institutions by the requirement that institutions must refer instances of fraudulent applications for Title IV, HEA aid. The commenters cited increased paperwork and litigation cost to the institutions.

Response: No change has been made. The Secretary believes that the administrative burden associated with this requirement will be minimal. Institutions are required to identify and resolve instances in which there are discrepancies in information received from various sources. Institutions are not required to investigate or litigate cases of suspected fraud. Institutions are merely required to refer instances when their actions under Sec. 668.14(f) reveal possible fraud or criminal misconduct. There should be relatively few of these instances at any single institution.

Comment: Several commenters were concerned that referring student information to law enforcement agencies would deny the applicant due process. Three commenters believed that under this provision students would receive unequal treatment based on the personal views of the financial aid administrator. Two commenters believed that referral of student information conflicted with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, 34 CFR Part 99.

Response: No change has been made. A school's referral of instances of suspected fraud to law enforcement agencies or the Office of Inspector General does not deny the student due process. Section 99.31 of the Department of Education's FERPA regulations specifically authorizes the release of student information as necessary "to enforce the terms and conditions of student aid." In addition, an institution is authorized to release information to the Secretary for audit, evaluation, and enforcement of Federal legal requirements that apply to federally supported programs (see 34 CFR 99.31(a)(3) and (4); 99.35).

Comment: Many commenters were concerned with the requirement in Sec. 668.14(c) that an institution must use an adequate number of qualified persons to administer the Title IV, HEA programs. Many commenters asked if the Secretary used a formula to determine what is an adequate number of qualified persons. One commenter stated that due to the diversity of institutions it would be impossible for the Secretary to make a determination.

Response: No change has been made. The Secretary does not use a formula in making this determination. What may be an adequate number of qualified persons to administer the Title IV, HEA programs at one institution may be insufficient at another. For instance, the number of individuals required at an institution to ensure proper and prudent administration of the student assistance programs will vary depending upon such factors as the amount of aid disbursed, the number of recipients, and the use of automated data processing equipment or a centralized award and disbursement system.

Comment: Several commenters argued that an institution should only have to evaluate academic periods during which a student received Title IV, HEA aid when determining if the student is making satisfactory progress in his or her course of study for purposes of Sec. 668.14(e).

Response: No change has been made. The purpose of the satisfactory progress rule is to ensure that limited Title IV, HEA program funds are given to students who are likely to complete their educational programs in a timely manner. Whether a student received aid during an academic period is irrelevant to that determination.

Section 668.15 Additional factors for evaluating administrative capability.

Comment: Several commenters disagreed with the proposed elimination of GSL and PLUS program default rates as indicators of an institution's administrative capability. They were of the opinion that postsecondary institutions may be indirectly responsible for default rates and should be required to assist lenders and State agencies in collection efforts. Other commenters were pleased with the proposal because they felt that GSL and PLUS program default rates are not related to an institution's administrative capability.

Response: A change has been made. The Secretary recognizes that an institution does not have the responsibility (unless it is also the lender) for collecting GSL, PLUS, and SLS program loans received for attendance at an institution and thus lacks direct responsibility for and control over that

aspect of loan administration. However, under the changes made to the HEA by the Higher Education Amendments of 1986, an institution, even if it is not a lender, is required to provide to each borrower exit counseling concerning indebtedness and debt management strategies. Further, a high default rate on loans made under the GSL, PLUS, and SLS programs may indicate other problems at an institution. Therefore, the Secretary has included default rates on loans made under those programs as indicators of an institution's impaired administrative capability.

Comment: A few commenters questioned the relationship between an institution's student withdrawal rate and its capability to administer Title IV, HEA programs. The same commenters questioned the rationale for using 33 percent as a benchmark figure to indicate possible impaired capability of administering Title IV, HEA program funds by an institution if this percentage of students withdrew during an eight-month period. One commenter asked what the submission of a balance sheet, financial audit, or profit and loss statement might have to do with student withdrawal rates and rates of default.

Response: A change has been made. Simply because an institution fits into one of the categories in this section does not automatically mean that adverse action will be taken against the institution. However, the Secretary believes that a high withdrawal rate at the institution or a high default rate for loans made under the GSL, PLUS, SLS, or Perkins Loan programs may be symptomatic of other administrative and financial problems at the institution that would be reflected in the institution's balance sheet, profit and loss statement, or financial audit. In addition, those rates may justify requiring the institution to take reasonable and appropriate measures to reduce those rates. The documents requested by the Secretary will enable the Secretary to determine the best available measures to take to reduce those rates.

The Secretary will allow an institution every opportunity to describe and justify the reasons for its high withdrawal rate or high default rate. The Secretary chose a benchmark withdrawal rate of 33 percent after extensive public comment on the Student Assistance General Provisions regulations published in the FEDERAL REGISTER on September 28, 1979 (see 44 FR 56278). The Secretary believes that a withdrawal rate of 33 percent or greater is an indication of possible administrative or financial problems at the institution that may cast doubt on the institution's administrative capability.

Section 668.16 Federal Interest in Title IV, HEA program funds.

Comment: One commenter was concerned that the language in this section, which states that an institution may not use or hypothecate Title IV, HEA program funds for any purpose other than for the intended student beneficiaries, excludes the investment of cash from the Perkins Loan fund which would increase the fund account.

Response: A change has been made. The prohibition against using or hypothecating Title IV, HEA program funds does not preclude the institution from investing cash from its Perkins Loan fund. Institutions are reminded that all earnings on such investments must be deposited into their Perkins Loan Program revolving funds (see sections 463(a)(2)(E) and 487(a)(1) of the HEA). However, the Secretary has revised this section to indicate that the institution acts in the capacity of a fiduciary of Federal funds to protect the interest of the Secretary as well as the intended student beneficiaries in those funds.

Section 668.17 Change in ownership resulting in a change in control.

Comment: Two commenters asked what constitutes a "controlling interest" in an institution. One commenter noted the elimination of the reference to the transfer of the liabilities of an institution to its parent corporation and asked whether such a transfer no longer constitutes a change in ownership. One commenter thought that a definition of "change of ownership" should be included in this section.

Response: No change has been made. In most cases, a controlling interest in an institution means an interest greater than 50 percent of ownership. The Secretary no longer considers the transfer of liabilities of an institution to its parent corporation to be a change in ownership that results in a change in control, hence the deletion from the regulations. The Secretary does not believe that a definition of the term "change of ownership" is needed in the regulations. Further, this section will be deleted from this part when the institutional eligibility regulations, 34 CFR Part 600, are published as final regulations.

Section 668.19 Financial aid transcript.

Comment: Over one hundred commenters were opposed to the change in the regulations that would prohibit institutions from certifying the institutional portion of a borrower's application under the GSL or PLUS programs until the institution receives the requested financial aid transcript. Many of these commenters stated that this proposal expands the time during which a borrower waits for his or her aid. They said that the additional delay would impose a burden on financial aid officers and a particular hardship on students enrolled in community colleges and proprietary institutions, where transfers are frequent and enrollment periods shorter than at traditional four-year institutions. Several commenters claimed that that delay might be as long as 4 to 6 weeks.

Several commenters suggested alternatives to this proposal. One alternative included allowing an institution to certify one GSL or PLUS application and deliver the first disbursement to the borrower, but not permitting an institution to deliver subsequent disbursements to the borrower without the financial aid transcript. Another alternative included (1) requiring all GSL and PLUS checks either to be sent to the educational institution for distribution or to be made jointly payable to the borrower and the institution and (2) making the release of the checks contingent on receipt of the financial aid transcript. Another commenter suggested that an institution should return the check to the lender if a financial aid transcript has not been received in a timely manner. Several commenters supported the proposed changes in principle.

Response: A change has been made. The Secretary agrees that withholding certification of a GSL, PLUS, or SLS application may delay the processing of the application. Therefore, the Secretary has revised Sec. 668.19 to permit an institution to certify a GSL or SLS application (but not a PLUS application) prior to receiving the financial aid transcript from the institution the borrower previously attended. However, the institution may not release the GSL or SLS proceeds until it receives the financial aid transcript. Under the requirements of the HEA as amended by the Consolidated Omnibus

Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, these proceeds are delivered directly to the institution, but PLUS proceeds go directly to the borrower. Therefore, since the institution has no control over the release of PLUS proceeds, the Secretary is retaining the requirement that the institution may not certify a PLUS application until it receives the financial aid transcript.

Comment: Several commenters felt that it would be impossible for institutions to provide accurate information on the financial aid transcript as to the amount of and period covered by each GSL or PLUS program loan received by a borrower. The commenters suggested rewording this section to read "approved" instead of "received" since financial aid officers only know the amount authorized and amount approved by the lender but not the actual amount received by the student.

Response: No change has been made. These comments were received before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, which require that except in the case of loans made to parent borrowers under the PLUS Program, proceeds must be sent to the institution. Therefore, in most cases an institution will be able to report the exact amount that a borrower received for any period after the implementation of the statutory change. The Secretary is aware that for periods before implementation of the statutory change, an institution may not know the exact amount received by a borrower unless the institution is the lender. If the institution did not receive the proceeds, the amount that the institution must report on the financial aid transcript is the loan amount that the institution certified.

Comment: Several commenters were of the opinion that requiring a financial aid transcript to be signed by an official authorized by the institution to disclose information in connection with Title IV, HEA programs is too restrictive. One commenter asked whether this requirement excluded the use of automated methods.

Response: No change has been made. The Secretary does not intend to limit the use of automated methods for preparing financial aid transcripts. However, if a computer-generated transcript is used, it must have the signature of someone who is knowledgeable about the information reported and authorized to disclose that information. It is important that the information provided be accurate and that the person attesting to the accuracy of the information be a reliable and responsible officer of the institution.

Comment: Several commenters asked whether the reference to "State" in Sec. 668.19(a)(2)(iii) of the proposed regulations refers to a State of the Union, a State in which the institution is located, or a foreign country for foreign institutions. One commenter asked whether this term includes Washington, DC.

Response: No change has been made. The definition of the term "State" appears in Sec. 668.2 (General definitions). The exclusion, therefore, refers to eligible institutions located in foreign countries.

Comment: A number of commenters stated that the wording in Sec. 668.19(a)(2) of the proposed regulations suggests that an institution may make one payment regardless of whether a transcript has been requested.

Response: A change has been made. The Secretary agrees that clarification is needed. An institution or student must request a financial aid transcript before the one payment is disbursed in accordance with the regulations.

Section 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

Comment: Many commenters requested an exception to the one-year restriction on noncredit remedial work in determining enrollment status for students receiving a Pell Grant. They claimed that it would be difficult for an institution to monitor when a student had completed an academic year of remedial work. A few commenters contended that this restriction would disproportionately affect low-income and nontraditional students who are the very students the Pell Grant Program is designed to help. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that an institution's satisfactory progress standards should form the basis for any limitation on remedial work. Some commenters thought that the Secretary does not have the statutory authority to limit Pell Grant payments for remedial work.

Response: No change has been made. The purpose of Title IV, HEA programs is to assist students who are enrolled in postsecondary education. The Secretary is not excluding remedial courses from eligibility but rather is setting a limit on the duration of remedial coursework that can reasonably be viewed as a part of a postsecondary program of study. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education.

Comment: A few commenters asked if the equivalent of a year of remedial work has to be completed within one academic year or if it could be taken over several academic years within the program of study.

Response: No change has been made. The hours that equal one academic year do not have to be taken within a single academic year. Based on individual needs, a student could spread the academic year of work (30 semester hours, 45 quarter hours, or 900 clock hours) throughout his or her program of study, if permitted by the institution.

Comment: One commenter disagreed with the exception to the one-year limit for students enrolled in courses in English as a second language.

Response: No change has been made. Although students enrolled in courses in English as a second language are exempt from the one-year limitation, these students are still subject to the one-year limitation for any other courses that are remedial in nature. The Secretary believes that these students usually have the knowledge and skills of high school graduates but need to learn a second language as part of their postsecondary program.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

Comment: Many commenters felt that, for the most part, Sec. 668.22 of the proposed regulations clarified the difference between refunds and repayments. However, many

commenters were confused on how the concept of a "payment period" would be applied to GSL and PLUS program loans. Several commenters, writing before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, expressed concern over the fact that a typical GSL or PLUS program loan was disbursed in a single payment that covered expenses for the entire period of enrollment.

Response: No change has been made. The calculation of the refund distribution formula in Sec. 668.22 is based on the concept of "payment period" as that term is used in most of the Title IV, HEA programs. In the context of the GSL, PLUS, and SLS programs, however, that concept is different, and it generally refers to the period of enrollment for which a loan is made. For consistency in the application of the formula, therefore, an institution is to consider that enrollment period to be divided into portions that correspond to the payment periods used for the other Title IV, HEA programs.

For purposes of the refund distribution fraction, the amount of the GSL, PLUS, or SLS proceeds considered to be awarded for a payment period is determined by dividing the whole loan amount by the number of institutionally defined payment periods in the period of enrollment for which the loan is made. For example, if the enrollment period for which the GSL, PLUS, or SLS program loan is made equals three academic quarters and the student was awarded a GSL of $1,500, one-third of the total loan, i.e., $500, is considered to have been awarded for each payment period.

It should be noted that the changes in the HEA made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987, which were enacted after these comments were received, require multiple disbursements for GSL, PLUS, or SLS proceeds for periods of instruction greater than six months if the loan amount is $1,000 or more. However, for a student who is awarded a multiple disbursement loan, the amount of the loan proceeds actually disbursed is not necessarily the same as the amount that is considered to have been disbursed in each payment period. For example, an institution uses an academic calendar divided into quarters and the enrollment period for which a loan is made consists of three quarters. A student receives a $1,500 GSL in two disbursements of $750 each. However, for purposes of the refund formula, the student is considered to have received a disbursement of $500 in each of the three quarters (payment periods).

Comment: Several commenters suggested that simplicity and consistency in the refund concept for all Title IV, HEA programs, could be enhanced by changing the word "awarded," which is used in the numerator and denominator of the formula, to "disbursed."

Response: No change has been made. During the development of the refund formula that first appeared in the Student Assistance General Provisions regulations in 1979, the Secretary determined that it would be easier for an institution to use the term "amount awarded" in the refund and repayment formula. The institution may not know the amount the student has actually received, particularly in the case of a PLUS Program loan or other assistance provided by organizations outside the institution.

Comment: Many commenters agreed that in refund cases, Title IV, HEA program funds should be returned to respective accounts in a timely manner, but stated that 30 days was an insufficient amount of time for doing so.

Response: A change has been made. In an effort to reduce potential abuse of Title IV, HEA program funds and allow for prompt rewarding of returned SEOG and Perkins Loan funds, the Secretary is keeping the 30-day repayment rule. However, the Secretary has revised the regulations so that the 30-day repayment period for unofficial withdrawals will not commence until an institution determines that a student has withdrawn. An institution must have a method for promptly determining when a student has unofficially withdrawn, because the institution is responsible for maintaining a system to ensure the timely return of Title IV, HEA program funds.

Comment: Four commenters stated that Sec. 668.22(a)(3) of the proposed regulations is ambiguous in referring to "institutions which do not receive funds under the Alternate Disbursement System (ADS)" rather than simply stating that the procedure applies to institutions using the Regular Disbursement System.

Response: A change has been made. The Alternate Disbursement System ceased operation after the 1986-87 award year. Therefore, references to both the Alternate Disbursement System and the Regular Disbursement System have been removed from the regulations.

Section 668.24—Audit exceptions and repayments.

Comment: Several commenters questioned the reasoning behind the proposed change from 60 to 30 days on the time allowed for audit exception repayments.

Response: A change has been made. In the proposed regulations, the time in which an institution must repay improperly spent funds would have changed from 60 days to 30 days to conform to the instructions in the revised Office of Management and Budget (OMB) Circular A-50 issued on September 29, 1982. In these final regulations, the Secretary has changed that number of days from 30 to 45. This change corresponds to the change in the HEA made by the Higher Education Amendments of 1986, which allows an institution to request a hearing on the record regarding an audit exception within 45 days.

Section 668.25—Loss of institutional eligibility.

Comment: Several commenters wanted a definition of "commitment" for the GSL and PLUS programs, such as the one in Sec. 668.94(c)(2) of Subpart G (originally published as Sec. 668.84(c)(2) of the proposed regulations). These commenters recommended that language be included in this section to prohibit an institution from certifying a student's eligibility on a GSL or PLUS application during the loss of institutional eligibility.

Response: A change has been made. The Secretary agrees with the commenters that a definition of "commitment" under the GSL, PLUS, and SLS programs is needed in this section for clarity. Language similar to that in Sec. 668.94(c)(2) of Subpart G has therefore been added to Sec. 668.25(b). The revised Sec. 668.25(b) provides that a commitment under the GSL, PLUS, or SLS programs takes place when the Secretary or the guarantee agency advises the lender that a loan is guaranteed. Section 682.603 of the regulations implementing the GSL Program permits an

institution to distribute proceeds to a student, pursuant to 34 CFR 682.604, if the GSL, PLUS, or SLS application was certified by the institution prior to the institution's loss of eligibility. The regulations implementing the GSL Program prohibit an institution from certifying an application after the loss of eligibility.

July 19, 1991 Federal Register

Section 668.15—Additional Factors for Evaluating Administrative Capability

Comment: Most commenters stated that reduction of an institution's cohort default rate should not be the sole criterion under which an institution subject to loss of GSL eligibility could demonstrate exceptional mitigating circumstances. Numerous comments suggested giving weight to the success of an institution in serving exceptionally disadvantaged students. Other comments suggested that institutions with minimal participation in the student loan program should be exempted from a loss of eligibility. Additional comments included concerns that (1) the proposed rule would permit an institution with a very high cohort default rate (over 50 percent) to remain in the program, while excluding another institution with a rate of 36 percent; (2) the economic health and general state of employment in the region should be considered; (3) the historic mission of the institution should be considered; and (4) reduction of dollars in default should be considered.

Discussion: In their final form, for the reasons stated earlier in this preamble, the regulations respond to most of these concerns, the goals of Congress in the legislation, and the national requirement for access to quality postsecondary education and training opportunities.

In summary, consistent with the statutory purpose, the Secretary has determined that institutions with cohort default rates above the statutory thresholds should bear a substantial burden in overcoming the presumption that they are ineligible for the GSL programs based on their default rates. The final regulations include narrowly tailored exceptions to ensure that these institutions with consecutively high cohort default rates remain eligible only if the mitigating circumstances are truly "exceptional" and would result in inequities to the institution and its students if the institution were made ineligible. Thus, the primary exceptional mitigating circumstance defined in the final regulations includes a very high level of performance by an institution with reference to the completion and placement rates of its students. This test is applied if an institution can demonstrate that it serves a very high percentage of students from disadvantaged economic backgrounds or that a very small percentage of its students receive Stafford or SLS loans.

The regulations do not refer to an institution's reduced dollar volume of defaults as an exceptional mitigating circumstance. The Secretary believes that a reduction in the institution's borrower-based cohort default rate more accurately reflects the positive actions it has taken with its individual borrowers to reduce defaults. In addition, consideration of the dollar volume of defaults would give an unfair advantage to institutions with longer programs whose borrowers have larger loan balances and would be more easily able to demonstrate such a reduction. Further, a reduced dollar volume of defaults may be a result of changes in regulatory and statutory requirements (such as multiple disbursement, delayed delivery of loan proceeds, and loss of eligibility to participate in the SLS program) rather than from any action taken by the institution.

Changes: A change has been made. The Secretary has decided to recognize additional mitigating factors in the definition of exceptional mitigating circumstances in addition to the reduction of an institution's cohort default rate specified in 34 CFR 668.15(g)(1)(ii). An institution may appeal its loss of eligibility to participate in the GSL programs on the basis of exceptional mitigating circumstances as follows:

(1) With respect to the fiscal year 1991 determination only, the institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage; or

(2) The institution has had 15 percent or fewer of its at least half-time students receive Stafford or SLS loans for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, or the institution has, for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, enrolled individuals from disadvantaged economic backgrounds as two-thirds or more of its at least half-time students; and the institution has at least two-thirds of its full-time students complete their programs and at least two-thirds of those who receive a degree, certificate or other recognized credential from the institution placed in relevant jobs or higher levels of education.

Comment: Many commenters suggested that the Secretary should use the institution's status with its accrediting body as an exceptional mitigating circumstance. The commenters argued that an institution's good standing with its accrediting body or bodies indicated that the institution was providing quality educational services to its students, and, therefore, any loss of GSL eligibility for such an institution would be inequitable.

Discussion: The Secretary does not believe that an institution's ability to maintain minimum standards sufficient to retain accreditation constitutes an exceptional circumstance so that it would be inequitable to apply the statutory threshold to a high default institution, resulting in a loss of eligibility. Rather, he believes that to qualify under the exceptional mitigating circumstances standard, an institution must show that it is doing an exceptional job from an outcome standpoint with students from disadvantaged economic backgrounds, or that a small percentage of its students receive Stafford or SLS loans and the institution is doing an exceptional job from an outcome standpoint.

Changes: None.

Comment: Several commenters suggested that the Secretary consider a high incidence of default by an institution's borrowers attributable to documented evidence of a lender's improper servicing of those loans as an exceptional mitigating circumstance. These commenters stated that they believed this was consistent with the amendment to the definition of cohort default rate contained in Public Law 101-542 that provided that only loans for which the Secretary or a guarantee agency had paid a claim of insurance would be included in the rate and excluded any loans which, due to

improper servicing and collection, would result in an inaccurate rate.

Discussion: The Secretary specifically prescribes in regulations (See 34 CFR 682.209 and 682.411) the servicing and collection requirements that guarantee agencies must follow for GSL programs loans as a condition for reinsurance coverage. Guarantee agencies are required by regulation to examine all lender claims for compliance with the regulatory requirements before a lender's default claim is paid. An improperly serviced loan is rejected and is not included as a default in the institution's cohort default rate. Therefore, absent a finding by the Secretary that a guarantee agency has not complied with claims review requirements, the Secretary recognizes the default data used to calculate an institution's rate to include only insured loans.

Changes: None.

Comment: Several commenters suggested that the Secretary consider an institution's diligent compliance with the appendix D—Default Reduction Measures of the June 5, 1989 default reduction regulations as an exceptional mitigating circumstance. These commenters argued that this criterion is justifiable as an exceptional mitigating circumstance because a high default institution that is diligently implementing these provisions to reduce the incidence of default by its students is doing so at the direction of the Secretary and acting appropriately to reduce its default rate. Therefore, the commenters argued, such an institution should not lose its eligibility to participate in the GSL programs despite the fact that its default rate remains high.

Discussion: The Secretary does not agree with the commenters that an institution's diligent implementation of the appendix D—Default Reduction Measures (54 FR 24119) should be recognized as a criterion that would demonstrate an exceptional mitigating circumstance. The implementation of appendix D—Default Reduction Measures was mandated for institutions with high cohort default rates by regulations and was provided as the only basis for an institution with an unacceptably high cohort default rate to avoid a limitation, suspension, or termination action under the Secretary's default reduction initiative. The Secretary does not believe that compliance with required default reduction measures is an exceptional mitigating circumstance under the requirements of Public Law 101-508.

Changes: None.

Comment: Several commenters suggested that an institution's history of program reviews of its administration of the title IV student assistance programs by the Department or the guarantee agency, or independent audits conducted of institutional compliance, should be considered as an exceptional mitigating circumstance. These commenters argued that if no major problems were uncovered by such reviews at the institution that the institution could not be said to lack administrative capability and that its default rate was due to other factors beyond its control.

Discussion: The Secretary does not agree with the views of these commenters. An institution is expected to properly administer the Federal student financial assistance programs as a minimum condition for participation. The Secretary believes that compliance with these requirements, as shown by an acceptable program review or audit, can hardly be viewed as an exceptional mitigating circumstance consistent with the stringent standard of Public Law 101-508.

Changes: None.

Comment: Many commenters suggested that the Secretary amend the exceptional mitigating circumstance contained in the NPRM that required a reduction of an institution's default rate each year by 50 percent of the amount its rate exceeds the threshold rates for the two fiscal years preceding the institution's loss of eligibility. These commenters argued that an institution's cohort default rate may drop by more than the amount that would be acceptable under the proposed provision over a two year period, but if the rate did not drop by the specific amount for each year the institution would lose its eligibility. Several other commenters encouraged the Secretary to adopt the 5 percent reduction standard of the June 5, 1989 default reduction regulations instead as a more "reasonable" standard of reduction.

Discussion: The Secretary believes that the requirements of Public Law 101-508 require a more stringent standard of demonstrated, ongoing progress in default reduction than that required by previously issued regulations. The Secretary also concluded from comments that this circumstance should only be considered for the current year's notification of loss of eligibility to provide relief to institutions that had already begun a successful multi-year program of default reduction prior to passage of the legislation requiring that default rates drop below 35 percent for the 1989 cohort. The demonstrated success of those institutions indicating that compliance with the new threshold is imminent would constitute an exceptional mitigating circumstance.

Change: A change has been made. Although the Secretary has maintained the institution's reduction of cohort default rate criterion, the Secretary has changed the regulations to permit an institution to appeal on this basis only with respect to notification of its loss of eligibility in fiscal year 1991.

Comment: Several commenters suggested that the 30-day timeframe in which an institution may submit an appeal of its loss of eligibility to participate in the GSL programs to the Secretary does not provide the institution adequate time to prepare the appeal and recommended a 60-day period. Further, many commenters argued that an institution appealing its loss of eligibility on the basis of inaccurate default rate data would be unfairly denied a significant portion of the 30-day timeframe under the NPRM proposals because the 15-day period for the guarantee agency or agencies to respond to its request for verification of its default data was included in the 30-day appeal period.

Discussion: The 30-day timeframe in which an institution may submit an appeal to the Secretary is mandated by section 435(a)(3) of the HEA. The Secretary does not have the authority to extend this timeframe, nor is compliance with this time limit infeasible. However, the Secretary does not believe that Congress intended an institution to violate the timeframe under which it may submit an appeal based on inaccurate default rate data as a result of time required by one or more guarantee agencies to respond to its request to have that data verified.

Change: A change has been made. The Secretary has revised the regulations to permit an institution that is having its default rate data verified by a guarantee agency or

agencies to submit to the designated Department official an appeal that is otherwise complete by the 30-day appeal deadline. The Secretary will accept the verified default rate data from the guarantee agency or agencies after the 30-day timeframe has elapsed if the institution provided to the Secretary's designated Department official, at the time the request was made, a copy of its request to each cognizant guarantee agency for verification of the data. An institution that wishes to participate in the programs while the appeal is pending must request this verification of the data from each cognizant guarantee agency within 10 working days from the date on which the Secretary notified the institution that its cohort default rate exceeds the statutory thresholds. Otherwise, an institution must request verification of the data by the 30 day appeal deadline. The verified data must be submitted to the Secretary's designated Department official by the institution within five working days of its receipt from the guarantee agency. The institution's appeal will not be considered complete, so as to cause the Secretary's 45-day period for appeal determination to commence, until the institution submits, within five working days, the data verified by the guarantee agency.

Comment: Several commenters indicated that 15 working days did not provide the agency adequate time to verify an institution's default rate data. Since many guarantee agencies may receive numerous institutional requests for default rate data verification immediately following the Secretary's release of the cohort default rates, the commenters suggested that the Secretary extend the amount of time in which a guarantee agency must respond to such requests.

Discussion: The Secretary understands that a 15 working day response time may be difficult for an agency to meet if it receives numerous requests for default rate data verification at the same time. However, the statute provides institutions and the Secretary an equally short timeframe to submit and act on an appeal, primarily to protect the interests of students at affected institutions. Therefore, the Secretary does not believe it is fair to institutions and their students to provide guarantee agencies an extended period to respond to verification requests. The Secretary expects the guarantee agencies to support this important initiative by allocating the personnel and other resources necessary to respond to verification requests within 15 days. Additionally, the Secretary believes that the requirement that an institution provide the agency with specific information regarding what it believes is inaccurate in its default rate data will greatly assist the agency in responding to the institution's request.

Change: A change has been made. Although the Secretary has not extended the 15 day timeframe in which a guarantee agency may respond to an institution's request for verification of default rate data, the final regulations have been revised to require an institution to provide the guarantee agency with specific information pertaining to its default rate data to facilitate a guarantee agency's review of such data within the 15 day timeframe. The final regulations require an institution that requests a guarantee agency to verify its findings related to the inaccuracy of its default rate data to provide the agency with the names and social security numbers of the borrowers the institution wishes to verify, and detailed information on the nature of the inaccuracy in the data the institution is requesting the agency to verify.

Comment: Several commenters recommended that the Secretary make it clear in the final regulations that an institution's successful appeal under these provisions does not prohibit the Secretary or a guarantee agency from taking emergency action or initiating a limitation, suspension, or termination action against that institution for cause.

Discussion: The Secretary does not believe that such a clarification is necessary. The appeal provisions of the regulation in no way preclude the Secretary or a guarantee agency from taking such an action against a participating institution as it normally would for cause.

Changes: None.

Comment: One commenter expressed concern that a student with an outstanding GSL loan who is attending an institution that has lost its eligibility to participate in the GSL programs under Public Law 101-508, should not lose his or her eligibility, if applicable, for grace-period benefits or an in-school deferment, if otherwise eligible, in light of the regulatory requirements of 34 CFR 682.201 and 682.210 mandating that a student be enrolled in a participating institution. The commenter suggested that the Secretary make an exception in the regulations for such a student.

Discussion: The Secretary shares the commenter's concern about the status of affected students, but does not believe that a change in regulations is necessary. It has been the longstanding view of the Department that the benefits provided to a borrower under the terms and conditions of his or her promissory note should continue to accrue to that borrower if the institution attended by the borrower undergoes a change of status, provided the borrower otherwise maintains eligibility for the benefit. Therefore, as long as borrowers at affected institutions maintain the required level of enrollment and meet other criteria to maintain their grace-period or qualify for an in-school deferment, they will continue to receive these benefits. These benefits, however, will not apply to students transferring to the institution or withdrawing and later returning to the institution after its loss of eligibility to participate.

Changes: None.

Comment: Several commenters recommended that an institution that appeals on the basis of exceptional mitigating circumstances should serve the appeal and all its attachments upon each guarantee agency that has guaranteed loans that are part of that institution's cohort default rate at the same time that institution submits its appeal to the Secretary.

Discussion: The Secretary does not agree with the commenters that an institution should serve a copy of its appeal to each guarantee agency that has guaranteed loans that are part of that institution's cohort default rate. The Secretary believes that this would be an unnecessary burden on the institution. It is the Secretary's responsibility to decide an institution's appeal. Further, the Secretary believes that the data and the supporting information the institution must provide the Secretary in its appeal will be sufficient for the Secretary to make an informed decision regarding the institution's appeal. Of course, separate provisions require that the guarantee agency verify rates when an institution appeals on the basis of inaccurate data.

Changes: None.

Comment: Many commenters stated strong objections to the Secretary's proposal not to provide oral hearings or

further appeal of the Secretary's decision on an institution's appeal. They argued that not providing for such hearings as part of the appeal process denied the affected institution with the due process normally accorded an institution that loses eligibility under a termination action.

Discussion: Nothing in Public Law 101-508 indicates that Congress intended the Department to provide oral hearings. Moreover, the factors which the Secretary will consider as exceptional mitigating circumstances must be supported by adequate written evidence sufficient to discharge the appealing institution's burden of proof, and there is no need for oral testimony.

Changes: None.

Comment: A commenter indicated that the Secretary should modify proposed 668.15(i) so that graduate students and students that have previously borrowed SLS loans for a particular program of study at an institution would not lose their eligibility at institutions having cohort default rates that equal or exceed 30 percent. The commenter also indicated that this change was necessary for this proposed section to accurately reflect the statutory provision of the HEA that this regulatory change implements.

Discussion: The Secretary agrees with the commenter that these changes are necessary to accurately reflect the statutory provision of the HEA requiring this regulatory change.

Changes: A change has been made. The Secretary has revised the proposed rule to clarify that graduate students and undergraduate students who have previously borrowed SLS loans for a particular program of study continue to be eligible for SLS loans to complete that program if the institution they are attending has a cohort default rate that equals or exceeds 30 percent. Further, the Secretary has modified this provision to prohibit an undergraduate student from obtaining further SLS loans during an extension of the duration of the program of study for which the student is enrolled if the extension was effected on or after November 8, 1989, consistent with Public Law 101-239.

Section 668.25—Loss of Institutional Eligibility to Participate in the Title IV, HEA Programs

Comment: Many commenters stated their objection to the restriction on further delivery of GSL loan proceeds after an institution receives notice of loss of institutional eligibility to only those students to whom a first disbursement had been delivered prior to the institution's notice of its loss of eligibility. Particularly in the case of a loss of eligibility under the high default rate provisions of Public Law 101-508, many commenters argued that the Secretary's decision not to permit an institution to participate in the GSL programs pursuant to the authority granted him under section 435(a) of the HEA, other than under the limited circumstances described above, would result in a lack of due process for the institution and cause irreparable damage, especially to an institution that later successfully appeals its loss of eligibility to participate in the GSL programs.

Discussion: The Secretary believes that it is important to provide a student who has received the first disbursement of a GSL programs loan and who has completed a significant portion of his or her program of study access to subsequent disbursements of the loan. The Secretary believes that a loss of access for such a student will present serious obstacles to the student's completion of the program and will, in all likelihood, precipitate a default. However, for other students enrolled at an institution that loses eligibility, the Secretary believes that it is equally important to prevent a student from becoming indebted for a program that he or she may not have an opportunity to complete because of the student's inability to obtain additional GSL programs loans. The Secretary believes that, in the case of an institution's loss of eligibility, especially a loss of eligibility to participate in the GSL programs due to a high default rate, concerns for any hardship imposed on an affected institution and its students during the short timeframe for appeal are outweighed by the importance of maintaining the integrity of the GSL programs. In fact, for an institution that successfully appeals its loss of eligibility, the Secretary believes that reinstatement of the institution's eligibility back to the date of loss of eligibility ameliorates the hardship experienced by a student who was initially denied access to the GSL programs. Moreover, an institution that appeals the loss of eligibility due to a high cohort default rate may continue to participate in the programs during the pendency of the appeal provided it takes the procedural steps delineated above.

Changes: A change has been made. The final regulations have been revised to make clear that an institution appealing a loss of eligibility due to a high cohort default rate may continue to participate in the programs during the pendency of the appeal provided it takes the procedural steps indicated above.

July 31, 1991 Federal Register

Section 668.7 Eligible Student

Comments: The proposed revisions to this section drew the largest number (71) of comments on the NPRM. Some commenters supported the changes, but many questioned the need for, or potential effectiveness of, the changes. Some commenters doubted that there is a problem that needs to be addressed through regulation. Some commenters suggested that rather than implement regulations affecting all participating institutions, the Secretary take appropriate action against those few that do not administer the title IV, HEA programs properly. One commenter suggested that before implementing regulations in this area, the Secretary conduct a quality control study to identify the extent and severity of fraudulent receipt of title IV, HEA program funds through the use of false identities. Two commenters suggested that the Secretary recommend these procedures for establishing the identity of recipients of title IV, HEA program aid rather than require them through regulations.

A large number of commenters objected to the provision that would require an institution to document that a student had presented credible identification. They contended that the documentation requirement would impose an unnecessary additional administrative burden on institutions that are already required under existing regulations to document the same type of information on applicants for title IV, HEA program aid (for example, the requirement in 34 CFR 690.82 governing records of a student's name and social security number). Many commenters similarly objected that this documentation burden would be a recurring administrative burden disguised as a one-time requirement by language referring only to the first time that a student receives cash from the title IV, HEA programs. They claimed that, in

effect, an institution would be required to search the student's records for documentation to confirm that initial identification each time that the institution disburses or delivers cash from the title IV, HEA programs to the student. Many other commenters opposed the provisions because the provisions would prevent them from delivering checks to students, including students abroad and correspondence students, through the mail. Other commenters opposed these provisions as duplicative of other requirements, such as those required for identification of eligible noncitizens. Many commenters observed that the need to have students report for a cash disbursement or delivery in person, the need to review records each time a student is about to receive cash, and the requirement to review and document the student's identification would contribute to delays in the delivery of title IV, HEA program aid to all students.

Discussion: The Secretary recognizes the additional administrative burden that would be imposed on institutions by the adoption of this proposal. The Secretary believes that the potential benefits resulting from the additional safeguards established by this proposal do not outweigh the considerations offered by these commenters. The Secretary, after further review, has concluded that existing statutes, regulations, and procedures provide sufficient safeguards against individuals receiving title IV, HEA program aid through false identities. In those few instances where violations have occurred, the Secretary finds that enforcement measures taken against violators have been effective.

Changes: Section 668.7(a)(11) of the NPRM is withdrawn from these final regulations.

Section 668.13 Factors of Financial Responsibility

Comments: Most of those who commented on the changes in this section supported those changes. Several commenters expressed concern that the threshold of 25% of ownership as indicative of the ability to affect substantially the actions of an institution is too high. Some of those commenters urged the Secretary to adopt a threshold of 10% instead, maintaining that that is the percentage relied upon by the SEC. One commenter recommended that the Secretary not use any precise percentage as an indicator of that ability. One commenter suggested that instead of 25%, the controlling interest in a corporation, as defined by the SEC, should trigger the application of these changes.

Discussion: As noted in the preamble to the NPRM, the Secretary considers the ownership (modifications in the concept of "ownership" are discussed below) of at least 25% of an institution or its parent corporation generally to constitute the ability to affect substantially the actions of the institution. The Secretary chose the threshold of 25% to serve purely as a guideline for administrative convenience. The percentage, which is relatively conservative, is not intended to be an accurate reflection of all degrees of ownership that could constitute the ability to affect substantially the actions of an institution. However, if actual experience with application of these provisions should reveal that a different percentage is more reflective of that ability, the Secretary would consider changing that percentage.

Changes: None.

Comments: A commenter opposed the concept of holding individuals with substantial ownership responsible for the actions of an institution on the grounds that, for public stock corporations, SEC regulations and some State laws prevent individuals with substantial ownership from exercising control over the actions of the corporation. Another commenter pointed out that certain types of limited partnership arrangements also have legal limitations on the degree of control that the partners may directly or indirectly exercise. One commenter suggested that these provisions conflict with certain SEC regulations and State laws that define corporations as "individuals" and hold the corporations rather than stockholders responsible for the actions of institutions. Another commenter was concerned about the vulnerability of an institution owned by a publicly traded corporation to loss of participation in the title IV, HEA programs when the corporation may have no control over which individuals purchase the corporation's stock.

Discussion: It is not the purpose of SEC regulations to determine whether, or the degree to which, individual stockholders are responsible for the actions of their corporations. Further, it is not true that State laws never hold individual stockholders responsible for the actions of their corporations or the institutions owned by those corporations. These regulations reflect the natural consequences of the ownership of substantial percentages of stock in a corporation. Obviously, shareholders elect a corporate board of directors. The board of directors hires the corporation's or institution's executive officials. Control or substantial influence in choosing the board of directors therefore does confer control or influence over the actions of the corporation itself or the institutions owned by that corporation.

If the Secretary determines an institution not to be financially responsible under these new provisions, the institution may respond with evidence that applicable Federal and State statutes and regulations limiting the control of owners over the actions of their institutions have not been violated and other convincing evidence that owners lack the ability to affect substantially the actions of the institution or lacked that ability at a defunct institution. DEC's procedures for determining an institution's financial responsibility provide an opportunity for the institution to respond with that evidence. If the proceedings in subparts G and H apply, the institution may also provide that evidence through those proceedings.

Finally, the Secretary has provided alternatives to loss of participation in the title IV, HEA programs for any institution, including an institution owned by a publicly traded corporation, that the Secretary considers not to be financially responsible as a result of a person's acquisition of the ability to affect substantially the actions of the institution. The institution may demonstrate that the person who would normally be considered to have the ability to affect substantially the actions of the institution nevertheless could not affect substantially the actions of either the defunct institution or the currently participating institution in which the person acquired that ability. Alternatively, the person may repay the appropriate percentage of the liability incurred by the defunct institution.

Changes: None.

Comments: One commenter suggested that, instead of adopting this proposal, the Secretary pursue a course of seizing the assets of a defunct institution that owes liabilities on mishandled title IV, HEA program funds. Another commenter was concerned that the application of these provisions would interrupt the delivery of aid in the same

manner that a change of ownership resulting in a change of control interrupts the delivery of aid. Another commenter was concerned that these provisions are seriously weakened by allowing an institution to show that a person did not have the ability to affect substantially the actions of the defunct institution or does not have the ability to affect substantially the actions of the current participating institution. That commenter maintained that the proper use of title IV, HEA program aid is endangered any time that an institution permits 25% ownership by a person so strongly affiliated with an institution that owes liabilities on improperly administered title IV, HEA program aid. The applicable proportion of those liabilities ought, in this commenter's view, be repaid in every such instance. Two commenters were concerned that these provisions leave an opening for a person who was responsible for the actions of a defunct institution to avoid the consequences of liabilities resulting from those actions. They contended that such a person could continue to benefit from the title IV, HEA programs by using family members to purchase ownership in a participating institution.

Discussion: The Secretary adopts this rule because defunct institutions have ordinarily had no attachable assets from which outstanding liabilities could be satisfied. Moreover, existing regulations did not prevent a person who was responsible for incurring those liabilities from acquiring control of another institution and jeopardizing the administration of title IV, HEA programs there.

As noted in the discussion on Sec. 600.30, there is no interruption in the delivery of aid to an institution's students during the period in which a reported acquisition of ability to affect substantially the institution's actions is under review by the Secretary. While the Secretary believes that a person holding at least a 25% ownership interest in an institution generally has the ability to affect substantially the actions of the institution, the Secretary recognizes that this may not always be true. The Secretary believes that, under some circumstances, a person who held a greater than 25% ownership interest in a defunct institution may not have had sufficient influence or authority over the institution to bear responsibility for the mishandling of title IV, HEA program aid there. The Secretary believes that it is possible for a currently participating institution to safeguard against the exercise of such influence or authority by a person who was probably in a position to affect substantially the actions of a defunct institution that owes a liability on the misuse of title IV, HEA program funds. Thus, the Secretary believes that there must be an opportunity for an institution whose participation may ultimately be affected by these provisions to show that that person lacked or lacks that influence or authority with respect to either the defunct institution or the currently participating institution.

The Secretary agrees with those commenters who are concerned that a person who had the ability to affect substantially by the actions of a defunct institution may circumvent these provisions by having family members acquire an ownership interest in a participating institution or by authorizing someone else to represent him or her by proxy. For example, a woman might have held a 25% ownership interest in a defunct institution that owes liabilities on improperly spent title IV, HEA program aid. Her husband, alone or together with his wife, may subsequently purchase at least 25% of a currently participating institution. The Secretary believes that it is reasonable to expect the woman to be able, through her husband, to have an ability to affect substantially the actions of the participating institution.

Similarly, a person who did not own stock in a defunct institution that owes liabilities on improperly spent title IV, HEA program funds might, nevertheless, have had the ability substantially to affect the actions of the institution by obtaining the authority to vote on behalf of a group of other persons who owned at least 25% of the stock of the institution. The person who had that authority could subsequently purchase at least 25% of a currently participating institution, acquire similar authority on behalf of persons who own 25% of the participating institution, or arrange to have a relative purchase at least 25% of the participating institution.

Finally, the Secretary notes that a member of the board of directors of an institution clearly has the ability to influence the actions of the institution. Further, the chief executive officer, or another executive officer, of a defunct institution that owes liabilities on misspent title IV, HEA program funds may, without the knowledge or even the authority of the owner or board of directors of the institution, have influenced the activities of a defunct institution to a degree that resulted in the assessment of those liabilities, even if that officer did not hold an ownership interest in the institution. That person could be appointed to the same position at a currently participating institution, obtain at least a 25% ownership interest in the participating institution, or in one of the other ways described above acquire the ability to affect substantially the actions of the participating institution.

In any of these instances, the Secretary believes that it is reasonable to expect that the person who had the authority in the defunct institution will have an important influence in the actions of the participating institution. The Secretary therefore agrees that revisions in the proposed regulations are necessary to reflect not only the holding of a 25% ownership interest as an indicator of a person's ability to affect substantially the actions of an institution, but also related circumstances involving the holding of an ownership interest by family members, the exercise of voting authority on behalf of others who hold an ownership interest, or the exercise of executive authority.

In addition, the Secretary is aware that a person who had the ability to affect substantially the actions of a defunct institution may attempt to circumvent these provisions by disassociating himself or herself from the institution prior to the date that the institution becomes defunct. Therefore, to prevent a person from undermining the intent of these provisions, the Secretary recognizes the need to clarify that these provisions are applicable to those persons who had the ability to affect substantially the actions of a defunct institution within a reasonable period of time prior to the date that the institution became defunct. The Secretary considers that reasonable period to be 90 days.

The Secretary recognizes that there are many instances in which a person may have the ability to affect substantially the actions of an institution without owning at least 25% of the stock of the institution or the institution's parent corporation. Therefore, the Secretary believes that, for purposes of considering ability to affect substantially the actions of an institution, it is important to refer to the more inclusive term "ownership interest," rather than "ownership." The Secretary considers an "ownership interest" to be a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. The Secretary considers it

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useful to provide a list of examples of possible kinds of ownership interest, although that list is not exhaustive.

Obviously, one type of ownership that need not be listed is a sole proprietorship. An example that is listed includes three kinds of tenancy (combinations of two or more persons). A tenancy in common includes two or more persons who have an undivided interest in the whole, and whose heirs have the right to inherit the interest in the tenancy. A joint tenancy is similar to a tenancy in common except that the tenants' heirs do not have the right to inherit the interest in the tenancy, but instead the tenants themselves have the right of survivorship. A tenancy by the entireties is a joint tenancy by a husband and wife. A second example of an ownership interest is a partnership, which is a combination of two or more persons to conduct a business for profit. A third example includes the beneficiary of a trust.

The Secretary also believes that the term "ownership interest" must exclude interest in certain investments in which the investors, while clearly beneficiaries, have no control over the investments. Thus, for example, a person may have a right to share in the proceeds of mutual funds that are regularly and publicly traded. However, those funds may be invested in a corporation that owns an institution that subsequently becomes defunct while owing liabilities on misspent title IV, HEA program funds. The Secretary does not believe that that person had the ability to affect substantially the actions of the institution, even if those mutual funds constituted at least 25% of the stock of that corporation. Similarly, the Secretary does not consider an ownership interest to include shares in the ownership of, or the right to share in the proceeds of the operation of, institutional investors or a profit-sharing plan that covers all employees.

Changes: The Secretary has made major revisions in proposed Sec. 668.13(c)(5) that remove the references to the ownership by an individual of at least 25% of the stock of an institution or institution's parent corporation and replace those references with references to a person who has the ability to affect substantially the actions of an institution. The Secretary considers the institution not to be financially responsible if the person acquires that ability and the following conditions also exist:

(1) On or before the date that the person acquired that ability, he or she or any member or members of his or her family had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the institution became defunct.

(2) The person, family member, or defunct institution owes a liability on mishandled Title IV, HEA program funds or for refunds of institutional charges to students, and any agreement to repay that liability is not being honored.

Proposed Sec. 668.13(d)(3) is revised to reflect that even if an institution would not be considered financially responsible because of the existence of the conditions described in paragraph (c)(5), the Secretary may determine the institution to be financially responsible, provided that the institution properly notifies the Secretary of the existence of those conditions and either—

(1) The liability incurred at the defunct institution is being properly repaid;

(2) The person who is generally considered to have the ability to affect substantially the institution's actions repays a portion of the defunct institution's liability proportionate to the ability of that person or those family members to affect substantially the actions of the defunct institution; or

(3) The institution can demonstrate either that the person who would generally be considered to have the ability to affect substantially the institution's actions nevertheless does not have that ability, or that neither the person nor any member of his or her family had that ability at the defunct institution.

The changes in paragraph (d)(3) require that the proportion described in item 2 above must equal or exceed the greater of—

(1) The total percentage of the ownership interest held in the defunct institution either alone or together by that person or any member or members of that person's family;

(2) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(3) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(4) Twenty-five percent, if that person or any member of that person's family was a member of the board of trustees, chief executive officer, or other executive officer of the defunct institution or of an entity holding at least a 25% ownership interest in the defunct institution.

The definition of a defunct institution has been moved from proposed paragraph (d)(4) to a new paragraph (h). The Secretary has added two new paragraphs (i) and (j), the former to define "ownership interest" for the purposes of Sec. 668.13, and the latter to list examples of the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution.

Paragraph (i) defines an "ownership interest" as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution. That term includes, but is not limited to (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust. The term "ownership interest" specifically excludes any share of the ownership or control of, or any right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded, (2) an institutional investor, and (3) a profit-sharing plan, provided that all employees are covered by the plan.

Under paragraph (j), the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds, either alone or together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(2) Is authorized to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution;

(3) Is authorized, together with another member or members of his or her family, to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution; or

(4) Is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity holding at least a 25% ownership interest in the institution.

Finally, paragraph (k) has been added to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter asked the Secretary to clarify what constitutes "ability to affect substantially the actions of an institution." Another commenter asked the Secretary to clarify who is considered to be legally responsible for the liabilities of a defunct institution, especially in institutions where there is more than one owner or more than one campus.

Discussion: The Secretary agrees that clarification is needed to explain the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. The discussion immediately preceding this one contains information on that matter. However, the Secretary emphasizes that it is the responsibility of the institution to demonstrate that for some other reason a particular person whom the Secretary considers to have or to have had that ability nevertheless lacks or lacked that ability.

The Secretary considers the person (whether an individual or a corporation) who executes the institution's participation agreement with the Secretary to be the party liable for an institution's debts arising out of the title IV, HEA programs. That liability may be shared or passed on to other persons by subsequent agreements with the Secretary. If the institution becomes defunct, that liability is retained by the person or persons who assumed the liability under the institution's most recent agreement.

The person with the responsibility for an institution's liabilities under the institution's agreement is responsible for all liabilities incurred by the institution through the administration of title IV, HEA program funds at any of the institution's campuses. If ownership of a particular campus is transferred to another institution, the responsibility for any liabilities incurred at that campus before the transfer remains with the owner of the institution that relinquished that campus. Even if the owner of the acquiring institution repays a portion of those liabilities, the ultimate responsibility of the original owner for those liabilities is not excused. If more than one person has assumed that responsibility, and one of those persons repays a portion of the liability in order to qualify a newly purchased institution for eligibility, he or she continues to share the responsibility of repaying the remaining liabilities.

Changes: Paragraph (j) has been added to describe the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of the institution (see the preceding discussion).

Section 668.20 Limitations on Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance

Comments: A few commenters supported these provisions. Many more objected. A number of commenters claimed that the requirement for remedial coursework to be at least at the secondary level to qualify for title IV, HEA program eligibility represents an unwarranted intrusion on institutional policies governing curriculum. Other commenters complained that this provision would have the effect of restricting access to postsecondary education by adults, students who received inadequate elementary and high school training, and economically disadvantaged students. Others claimed that these provisions conflict with efforts to improve adult literacy. One commenter claimed that because these provisions inhibit the ability of institutions to provide remedial education, and because remedial education encourages students to remain enrolled and reduces attrition rates, these provisions conflict with efforts to reduce default rates.

Discussion: The Secretary did not propose these provisions with the intention of inhibiting institutions from providing remedial education, nor of restricting access to postsecondary education by any group of students. The Secretary has always considered the title IV, HEA programs to be programs of aid for postsecondary education and has permitted such aid for a minimal amount of remedial education only as an adjunct to postsecondary education. The need for remedial training at the elementary level indicates to the Secretary a need for more than a minimal amount of remedial training.

The Secretary is concerned that funds appropriated for the title IV, HEA programs, which are intended by the Congress to be used for postsecondary education, not be misdirected to provide elementary training. The Congress has emphasized that postsecondary purpose by requiring, in the "Student Loan Reconciliation Amendments of 1989" and the Higher Education Technical Amendments of 1991, a student to obtain a high school diploma or the equivalent before qualifying for eligibility for Supplemental Loans for Students (SLS). In addition, the Congress elsewhere has already appropriated funds that are specifically intended to provide aid to elementary, secondary, and adult literacy programs. The Secretary supports the goal of reducing adult illiteracy but recognizes that many of the efforts in this area are being and need to be addressed by local communities and the providers of elementary and secondary education. The Secretary also notes that aid for elementary educational purposes from a variety of sources other than the title IV, HEA programs is available to postsecondary institutions. Therefore, the Secretary does not believe that these provisions will significantly reduce any institution's ability to provide remedial education for those who can benefit from that education.

With regard to the impact of these provisions on reduction of default rates, in the regulations published on June 5, 1989 (54 FR 24114), and in other communications provided to institutions, the Secretary has indicated that an institution has an obligation to take necessary steps to prevent or to reduce high default rates. If the institution is convinced that providing elementary remedial education will achieve this result, then the institution may do so. However,

title IV, HEA program funds intended for postsecondary purposes may not be used for that remedial education.

Changes: None.

Comments: Two commenters supported these provisions and suggested further that the Secretary should propose regulations to provide aid for remedial coursework that is at least at the secondary level and leads to the General Education Development certificate (GED). Two commenters suggested that the one-academic-year limitation on remedial coursework is a more effective limitation than any attempt to restrict remedial education to at least the secondary level. One commenter proposed that the Secretary conduct a study to determine appropriate goals and objectives of remedial education before imposing the new limitation. Another commenter suggested that the Secretary eliminate these provisions and replace them with a requirement for institutions to have counselors to evaluate whether students in remedial education have the ability to succeed at the postsecondary level within one academic year. One commenter asked how this provision applies to coursework that begins at the elementary level but ends at the secondary level. Several commenters suggested that title IV, HEA program assistance be available for a single or a limited number of elementary courses if the student is deficient in a single subject or limited number of subjects, or if the student's remedial needs are predominantly at the secondary level. A large number of commenters recommended that ESL coursework be exempted from these provisions.

Discussion: The Secretary does not intend to propose that title IV, HEA program assistance be available for a course solely because that course leads to the GED. The purpose of such a course is to provide a student with the equivalent of a high school diploma, not to enable a student to pursue a postsecondary degree or certificate program. The one-academic-year limitation on remedial coursework has been established to allow a limited amount of remedial coursework to be included in a student's postsecondary education. The Secretary believes, however, that the remedial coursework that the student pursues during that one-year period still needs to be sufficiently close to the postsecondary level that funds appropriated for postsecondary education are not used to finance coursework aimed at the elementary or secondary educational level. Coursework at the elementary level does not fulfill this requirement. Outside the very limited allowable uses described above, funds intended for postsecondary education cannot be diverted to other types of education, including remedial education, regardless of the results of any research on the goals and objectives of remedial education.

With respect to the recommendation for a requirement for an institutional evaluation of a remedial student's ability to pursue postsecondary education within one academic year of the student's enrollment, this concept already exists in Sec. 668.20(c)(2). Under Sec. 668.20(c)(2), title IV, HEA program assistance may not be used for any remedial coursework for a student if it would take more than one academic year's worth of that coursework to bring the student to the postsecondary level. These new provisions do not permit any remedial coursework below the secondary level to be included for purposes of eligibility for title IV, HEA program assistance. Thus, if coursework begins at the elementary level and ends at the secondary level, only that portion that is provided at the secondary level may be included for purposes of that assistance. The Secretary does not agree that even a limited amount of elementary coursework should be eligible for funds intended for postsecondary education, unless that coursework is in ESL.

The Secretary agrees with those commenters who suggested that ESL coursework should be excluded from the new provisions. The purpose of ESL coursework is to enable students to pursue postsecondary education when the major obstacle to that pursuit is the student's inability to speak English. The Congress expressed a similar intent when it authorized, under limited circumstances, Pell Grants for students enrolled solely in ESL courses. Since many non-English speakers may have the skills to pursue postsecondary education, but may be required to begin their English instruction at a very elementary level, the Secretary believes that the use of postsecondary funds for that purpose does not violate the intended purpose of those funds.

Changes: Courses in ESL are excluded from the requirement that remedial education be at least at the secondary level to qualify for title IV, HEA program assistance.

Comments: Several commenters suggested that the distinction between elementary and secondary education is often difficult to define and may vary from State to State. Two commenters asked how these provisions will apply if an institution's nationally recognized accrediting agency considers a remedial course to be secondary, but the institution's State licensing body considers the course to be elementary. Two other commenters wanted the Secretary's assurance that an institution's determination concerning the level of remedial education will be respected by the Department of Education and will not be questioned by the Department's program reviews and audits.

Discussion: The Secretary acknowledges that it may be difficult at times to distinguish between elementary and secondary education. For this reason, the Secretary has generally left those determinations in the hands of those most qualified to do so: State education officials and officials of the nationally recognized accrediting agencies and associations. If an institution's accrediting agency considers a remedial course to be secondary and the institution's State licensing body considers the course to be elementary, or vice versa, the Secretary, under these regulations, accepts the judgment of the body that considers the course to be below the secondary level. In cases where neither body judges the level of the course, the Secretary accepts the judgment of the institution. Department of Education officials charged with enforcing regulations may question any determination made by an institution concerning the administration of title IV, HEA program funds, and the institution must be prepared to demonstrate satisfactorily to those officials the institution's rationale for making that determination. Of course, if the institution disagrees with an audit or program review finding, the institution may appeal that finding.

Changes: None.

Section 668.23 Audits, Records, and Examination

Comments: A few commenters supported the changes in this section. Several commenters suggested that the Secretary should recognize the right of an institution to have representatives present at or tape recordings made of interviews with the institutions's personnel. One commenter suggested that the Secretary should permit either the attendance of representatives or tape recordings. Several

commenters claimed that the clarification concerning institutional cooperation and the changes concerning the presence of institutional representatives at or tape recordings of interviews are unconstitutional or illegal. Some commenters asserted that the appropriate route for the Secretary to obtain access to records and personnel is through subpoena. One commenter claimed that having an institutional representative present during an interview does not restrict or deny access. Two commenters were concerned that denying institutional representation or tape recording at interviews increases the potential for Federal officials to intimidate employees. Two commenters claimed that an interviewer might obtain incorrect or incomplete information by interviewing an employee without the presence of a more knowledgeable institutional representative. One commenter expressed the concern that an institution would be unable to challenge inaccuracies without having the presence of an institutional representative during an interview. Another commenter asked the Secretary to clarify that an individual has the right to be represented by legal counsel during an interview.

Discussion: These changes are neither illegal nor unconstitutional. These regulations generally articulate current Department policy that the effective monitoring of expenditures of public funds requires routine and direct access to those employees, agents, and records that pertain in any way to the administration of the title IV, HEA programs. Obviously, any examination of an institution's records and staff entails some amount of inconvenience, which is a reasonable and necessary incident of accepting the benefits of public support by Federal student aid. The Secretary agrees that subpoenas are an appropriate method of seeking access to institutional personnel and records. However, the Secretary notes that in its participation agreement, an institution agrees to comply with all applicable title IV, HEA program regulations, including those governing access. Accordingly, there is no need for the Department to seek subpoenas for documents and testimony unless refusal to cooperate by an institution makes recourse to compelled production necessary.

The commenters voice an understandable concern that the information secured by Department reviewers and auditors from subordinate institutional employees be accurate. That concern is shared completely by the Department, and the audit and review process affords management both informal and formal opportunities to learn the substance of any representation on which the Department would rely in any proposed adverse action or finding, and to correct or rebut any statements deemed inaccurate. These opportunities include the routine informal dialogue that accompanies the conduct of the review on-site, the more formal exit interview, opportunities to respond to draft audit reports before the Department issues a final determination, and the opportunity for a hearing on the record before a hearing official at which the institution may contest any such finding and submit its own evidence.

In light of these procedural protections, the Department does not believe that an institution's interest in presenting its position requires that it be permitted to deny access to its records or employees unless an attorney or other representative of institutional management is present or the interview is recorded. On the contrary, the potential threat of retaliatory dismissal or demotion posed by such presence or recording can reasonably be expected to have a chilling effect on a subordinate's desire to disclose important facts. The Secretary regards this rule, which forbids such interference in the fact-gathering process, as on balance a reasonable means of avoiding an intolerable restriction on the Department's responsibility to oversee administration of public funds.

Those comments that assert that the institutional management has a legal right to be present at any interview with a subordinate and to demand a record of such an interview rest on a misunderstanding of the nature of the inquiry and the applicable law. The rule addresses institutional responsibilities at a relatively early stage in the audit or program review process, a stage that is exclusively devoted to fact-gathering. Moreover, at this stage, the Department has not compelled the testimony of any employee or the production of any documents; the Department could compel testimony or document production only by the issuance of a subpoena, a power generally reserved to the Office of Inspector General. The case law is clear that neither the Constitution nor applicable statutes assure a person either the right to legal representation at this stage in an administrative review, or the right to a record of the information disclosed. These rights clearly apply when a person is served with a subpoena, or when the person is appealing an audit or program review to a formal hearing on the record, but not at these early, fact-gathering stages of the process.

Changes: None.

Comments: Two commenters recommended that representatives of guarantee agencies be given access to records and personnel to the same degree that representatives of the Secretary, Inspector General, and Comptroller General of the United States are given access. A commenter suggested that the provisions of Sec. 668.23(e) and 34 CFR 682.515(c) be modified to conform to the changes proposed in these regulations. A commenter was concerned that these regulations might authorize unrestricted access by a contracted auditor who may not be sufficiently qualified in matters concerning the title IV, HEA programs, or who may be overzealous. Several commenters asked that the term "timely access" be clarified. Some of these proposed various time frames, including advance written notice from the Secretary of five days, two weeks, or 30 days. One commenter urged the Secretary to recognize that certain inconvenient periods, such as registration, might justify advance notice to the institution. A commenter suggested that the term "reasonable access is ambiguous and suggested that the terms of reasonable access be arranged between the institution and the Department of Education several days in advance of a visit by the Secretary's representatives. Two commenters suggested that an exit interview should be required when an institutional representative is not permitted to attend an interview with an employee. Several commenters recommended that access to student records be accompanied by an appropriate written request from the Secretary identifying names and titles of investigators or reviewers, their agency, their legal authority, and the process by which the institution is informed of the results of the review or investigation. A commenter was concerned that agents of the Federal Bureau of Investigation or the Immigration and Naturalization Service who are representing the Secretary be required to Present proper identification.

Discussion: The Secretary agrees with those commenters concerning access by guarantee agencies and, in an NPRM published on November 20, 1990 (55 FR 48324), proposed amendments to Sec. Sec. 682.414, 682.515, and

682.610 of the GSL and PLUS program regulations that conform to the changes in these final regulations. Similarly, in a future NPRM, the Secretary will propose amendments that will consolidate paragraphs (b) and (e) of Sec. 668.23. The Secretary recognizes that the fact-gathering responsibilities discussed earlier require an addition to these provisions to emphasize that a contracted auditor be given the same access to an institution's records and personnel available to the Secretary, the Inspector General, and the Comptroller General of the United States. These regulations do not authorize unrestricted access to an institution's records and personnel; rather, these regulations require access to the extent necessary to monitor compliance with applicable statutes, regulations, special arrangements, agreements, and limitations. With regard to the commenter's concern about the competence of independent auditors, determining the adequacy of an auditor's qualifications is the responsibility of the institution that engages the auditor.

The Secretary is not defining "timely access" or establishing rigid time frames. Ordinarily, program reviews and audits are conducted according to an established schedule. If an institution is on that schedule, the Department contacts the institution in advance and requests access to the institution's personnel and records. Every effort is made to accommodate the institution's own schedule. However, at times immediate access to an institution is warranted. An institution is expected to have its records organized and readily available and should not object to providing prompt access to those records, even during periods when a financial aid, admissions, or other office of the institution experiences increased activity. It is often during just such periods that irregularities in the administration of title IV, HEA program funds are most likely to occur, and the institution's administrative capability is best measured. It is essential to proper accountability that the Secretary, the Inspector General, the Comptroller of the United States, or their representatives have immediate access to institutional records and personnel. Exit interviews are a routine part of all program and audit reviews. Access to student records for purposes of these regulations is authorized under the Family Educational Rights and Privacy Act and its implementing regulations. Authorized representatives of the Secretary, the Inspector General, or the Comptroller General of the United States are routinely prepared with documentation to substantiate their identities and the purpose of their reviews or examinations.

Finally, the Secretary notes that the intention of these regulations is to ensure that an institution give Federal officials and independent auditors reasonable access to all personnel who are associated with the institution's administration of the title IV, HEA programs. The Secretary is concerned that the term "institutional personnel" could be misinterpreted to apply only to an institution's immediate employees. The Secretary accordingly clarifies the current Department policy that reasonable access must be given not only to institutional personnel, but also to the personnel of those independent contractors and servicers who have been retained by the institution to administer or provide specific services related to the title IV, HEA programs.

Changes: Section 668.23(b) is revised to include an independent auditor among those to whom the institution is required to give cooperation in the conduct of audits. Section 668.23(b) is also revised to clarify that reasonable access must be given to any personnel associated with the institution's administration of the title IV, HEA programs, and not just "institutional" personnel.

Section 668.90 Initial and Final Decisions—Appeals

Comments: The majority of those who commented on the changes in this section supported those changes. Two commenters opposed the requirement for a hearing official to uphold terminations as unfair. A number of commenters maintained that the provisions for termination of institutions that repeatedly miss the deadline dates for filing audit reports and for the hearing official to uphold those terminations are too severe. They also maintained that these provisions do not take into account factors beyond the control of institutions, such as unfair deadline dates for submission of audit reports, deadline dates that conflict with the dates that Pell Grant closure reports are provided, difficulties in engaging private auditors during the times that audit reports are due, and numerous administrative changes in the Department's audit report requirements and procedures. Some of these commenters suggested instead that an institution be allowed to demonstrate to a hearing official that its failure to meet a deadline was beyond the control of the institution, or that the Secretary devise alternative penalties such as fines. One commenter claimed that failure to take into account those factors, coupled with the severity of the penalty imposed by these provisions, could leave these provisions open to legal challenge. Two commenters suggested that in view of the 1,500 institutions that had missed audit report deadline dates, there is a widespread problem for which termination is not a realistic solution.

Discussion: The proposed Sec. 668.90, while not actually providing for the automatic termination of an institution for a violation of the audit report deadlines in Sec. 668.23 if the institution had a history of missing those deadlines or if the institution failed to respond to the Department's reminders or fine notices, gave the impression that the Secretary would frequently be bringing termination actions against such institutions. The Secretary is hopeful, however, that failure to submit audit reports will soon become rare. The Secretary has taken additional steps, including improvements in monitoring, to encourage institutions to submit audit reports in a timely manner. However, the Secretary is persuaded that the fine, limitation, suspension, and termination proceedings in Sec. Sec. 668.83, 668.84, 668.85, and 668.86 provide a broad and effective range of sanctions to deal with violations of the deadlines in Sec. 668.23 for submission of audit reports. Both the Department's routine procedures for the review of audit reports and the more formal proceedings in subpart G offer ample opportunity for an institution to demonstrate that factors beyond the institution's control contributed to a failure to meet a regulatory deadline. The proceedings in subpart G give the Secretary discretion to impose sanctions suitable to the severity of a violation ranging from the fining of an institution to its termination from participation in the title IV, HEA programs.

The Secretary anticipates that rarely will violations of those deadlines be so flagrant as to justify the termination of an institution's participation. However, should the Secretary find it necessary to take a termination action against an institution for such a violation, the Secretary considers that type of violation to be sufficiently detrimental to effective monitoring of an institution's title IV, HEA program activities to merit the placing of restrictions on a hearing official's discretion to modify the decision to terminate the institution's

participation. The Secretary considers the fact that a large number of institutions have ignored deadlines and refused to take the simple steps to explain why those deadlines were ignored is a strong justification for adopting the changes in this section.

Changes: Section 668.90(a)(3)(iv) is revised to provide that a hearing official must uphold any termination action imposed against an institution for a violation of the deadlines for submission of audit reports in Sec. 668.23(c)(4).

Comments: A commenter suggested that instead of amending regulations, the Secretary improve the Department's internal monitoring procedures to prevent future situations in which approximately 1,500 institutions could fail to submit audit reports within required deadlines and remain undetected. Another commenter asked the Secretary to include provisions to notify an institution of its failure to submit an audit report within a required deadline and to provide the institution an opportunity to appeal corrective action. Another commenter suggested that the effective date for Sec. 668.90(a)(3)(iv)(B) be delayed for four years beyond the effective date for the rest of this section. Two commenters asked for clarification that an institution will not be subject to termination for a single late submission of an audit report. Two commenters recommended that the Secretary apply these provisions or emergency limitation, suspension, or termination action to instances in which an institution fails to provide timely access to records and personnel under the provisions of Sec. 668.23. One commenter asked the Secretary to apply these provisions to schools that fail to cooperate with guarantee agencies under the provisions of 34 CFR 682.610(e) in the conduct of program reviews.

Discussion: The Department of Education's internal procedures for tracking institutions that have failed to meet the audit report deadlines have been improved, as was noted in the preamble for the NPRM. That improvement was a factor in the Secretary's decision to make the changes noted above. The provisions governing fine, limitation, suspension, and termination actions by the Secretary already require the Secretary to notify institutions concerning the basis for those actions and the institutions' appeal rights. Because most institutions are able to comply with the deadline dates, the Secretary sees no reason to delay the effective date of these new provisions. As noted above, proposed Sec. 668.90 seemed to state that a termination action would result whenever an institution missed a deadline and neglected to respond to the Department's attempts to obtain an explanation and ignored the imposition of a fine for that violation. Under the changes made to the proposed Sec. 668.90, the requirement for a hearing official to uphold a termination could apply to an institution that misses a single audit report deadline, but only if the Secretary believes that the circumstances surrounding the violation justify the Secretary's bringing a termination action against the institution. Ordinarily, disputes concerning violations of that nature are resolved long before the dispute reaches the stage of a proceeding under subpart G. The Secretary believes that current regulations provide sufficient authority to initiate administrative proceedings against institutions that fail to comply with the provisions in Sec. 668.23 concerning timely access. Under the provisions of Sec. 682.410 of the GSL and PLUS regulations, a guarantee agency is required to take appropriate measures to ensure the enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program. Specifically, the guarantee agency is required to conduct on-site program reviews and report any allegations and indications having a substantial basis in fact and the scope, progress, and results of the agency's investigations to the Secretary. The Secretary believes that the provisions of Sec. 682.401 of the GSL and PLUS program regulations provide guarantee agencies with sufficient authority to establish effective standards and procedures for the limitation, suspension, or termination of school and lender participation in those programs.

Changes: None.

Comments: A commenter opposed Sec. 668.90(a)(3)(v) on the grounds that it does not take into consideration the impact of the new provisions of Sec. 668.13 on public corporations. Another commenter claimed that this provision was weakened by permitting an institution to establish that a person who owns a substantial part of an institution does not have the ability to affect substantially the actions of that institution or the institution of which he previously was a substantial owner.

Discussion: Similar concerns are addressed in the discussion on Sec. 668.13.

Changes: None.

December 2, 1991 Federal Register

Section 668.51 General

Comments: One commenter suggests that an institution participating in the Quality Control Pilot Project should not be required to collect income tax forms for students selected for verification. The commenter believes that the collection of income tax forms is an added administrative burden and may inhibit the institution form verifying a larger variety and number of error-prone elements than is required of it under applicable law.

Discussion: The Secretary believes that, to be effective, quality control procedures must include institutional verification of income information contained on the applicant's application for student financial assistance by comparison with the income information contained on the tax return. This is based upon the fact that an institution participating in the Pilot Project is subject to Sec. 668.14(f) of the Student Assistance General Provisions, which requires it to develop and apply a system to identify and resolve any inconsistencies found in the information supplied with respect to a student's application. The Secretary considers the tax return to be an effective means of resolving any such inconsistencies.

Changes: None.

Section 668.53 Policies and Procedures

Comment: Several commenters support the Secretary's proposal that an applicant be notified of his or her verification results only if the applicant's award or loan amount is to be changed as a result of verification. Commenters believe this proposal would relieve administrative and paperwork burdens.

Discussion: As proposed in the NPRM, the Secretary has amended Section 668.53 to provide for notification of verification results only where the applicant's award or loan

amount is to be changed, to relieve administrative and paperwork burden on institutions.

Changes: None.

Comments: Three commenters believe that it is not necessary for an institution to develop a written policy or procedure for verification. The commenters feel that the regulations specify the documentation students selected for verification must provide. The commenters suggest that the Department may address any of its concerns related to verification in the Verification Guide, which is published annually to update and restate current verification policies and procedures, rather than require the development of separate written policies and procedures for verification.

Discussion: By requiring institutions to develop written policies and procedures on verification, the Secretary intends to promote compliance with the substantive requirements set forth in the verification regulations by ensuring that institutions have detailed written policies and procedures that apply the regulatory standards to implement those verification requirements. The purpose of the Verification Guide is only to explain the verification regulations; the Guide does not provide any requirements other than those in these regulations and the regulatory and statutory requirements in other title IV programs.

Changes: None.

Section 668.54 Selection of Application for Verification

Comments: Three commenters oppose the requirement to verify up to 30% of the applications of applicants for assistance under Title IV programs in an award year. One of the commenters suggests that institutions should only be required to verify 20% of the applications. Another commenter suggests that institutions verify 12% to 15% of the applications. One commenter believes that the 30% verification limit is not practical for institutions with frequent enrollment periods because they find it necessary to verify 100% of their applications, although they are only required to verify 30%. Several commenters support the 30% limitation and do not foresee any added verification problems.

Discussion: Section 484(f) of the Higher Education Act of 1965, as amended, provides that an institution is not required to verify more than 30% of its applicants for Title IV assistance in any award year. The Secretary believes that any downward adjustment of the 30% required verification percentage would compromise the Department's ability to detect significant levels of error in Title IV applications and to prevent subsequent overawards and underawards. However, an institution is not limited to the verification of 30% of its applicants and may choose to verify a higher percentage of applicants if the institution believes a higher percentage is necessary to accurately administer the student financial assistance programs.

Changes: None.

Comments: Several commenters support the revised exclusions from verification as a result of the Compact of Free Association. One commenter opposes the exclusion from verification of eligible Title IV applicants who are residents of the Trust Territories and the Republics under the Compact of Free Association because the commenter believes it is inequitable to treat these students differently from all other students selected for verification, who are required to complete the verification process. The commenter feels that the exclusion of these students from verification will lead to fraud and abuse in their reporting of family income and resources.

Discussion: The Secretary has determined that the difficulties this limited number of applicants would face in obtaining documentation to verify their application information outweigh the potential fraud and abuse that could occur as a result of excluding them from verification requirements. Fraud and abuse is punishable under the law and the potential criminal penalties will continue to be a deterrent to students who might otherwise misreport their income and resources despite their exclusion from verification requirements. The Secretary believes that these students should not be required to provide verification documentation unless the institution has conflicting documentation concerning a student's finances or has reason to believe the information reported by the student is inaccurate.

Changes: None.

Comments: One commenter opposes requiring the signatures of the applicant and applicant's parents on verification documents because the time involved in obtaining the required signature tends to undermine any advantage to be gained by using the Electronic Data Exchange to speed up the delivery process. The commenter believes that securing the signature of the student at the entrance interview, instead of requiring signatures of both applicant and the applicant's parents on the verification documents, could shorten the verification process by at least four weeks.

Discussion: In accordance with Sec. 668.57, the Secretary will continue to require the signature of the applicant, and each of the applicant's parents whose income was required to be used in calculating the EFC. The Secretary believes that signatures compel signatories of verification documents to be responsible for the accuracy of the information provided in those documents and deter individuals who might otherwise purposely provide false or misleading information.

Changes: None.

Comments: A commenter questions the proposal that verification of a spouse's information or a spouse's signature, if the spouse cannot be located, not be required. The commenter does not believe that a married person would ever be unable to locate his or her spouse, unless the couple is separated. Therefore, the commenter suggests that this exception be deleted from Sec. 668.54.

Discussion: The Secretary has provided Sec. 668.54(b)(3)(iii) and (iv) for applicants who are not legally separated or divorced from their spouse and who are not able to either locate the spouse or contact the spouse using normal means of communication. The provision does not apply to an applicant living with a spouse or with knowledge of the spouse's whereabouts.

Changes: None.

Comments: Several commenters question and oppose inclusion of the statement "or the Secretary" in Sec. 668.54(a)(6) because they believe the Secretary already has the authority to request data. One commenter considers the

addition of the phrase "or the Secretary" to be the equivalent of giving the Secretary carte blanche authority to require documents that have no relationship to the assessment of a family's ability to pay postsecondary institutional costs.

Discussion: The phrase "or the Secretary" was added primarily to give the Secretary or his agent the authority to collect any data elements to complete reviews with regard to the institution's verification process. The Secretary believes that data collection authority in preparation for verification is essential in determining the reason for, and eliminating, applicant error while minimizing burden on institutions. The Secretary's authority and institution's authority to collect data are coextensive under these regulations, and neither the Secretary nor institutions have the authority under these regulations to collect documents unrelated to verification of data elements on student financial assistance applications.

Changes: None.

Comment: A commenter believes that students selected for verification by an institution should not be required to verify all required data elements because this will expand the verification process. The commenter suggests that the Secretary should keep the current policy in effect.

Discussion: The Secretary believes that applicants selected by the institution should verify all applicable items specified in Sec. 668.56 in an effort to eliminate applicant error. The six required items are all major factors in determining an applicant's EFC, and all are items shown to have high error rates in quality control studies of Pell Grant Program.

Changes: None.

Comments: A number of commenters suggest that the Secretary use the Electronic Student Aid Report (ESAR) to notify an institution to which a student is transferring that the student's previous institution had completed verification for the student, in cases in which both institutions use the ESAR system. Thus, a transaction "04" on an ESAR would indicate that the verification process was completed for a transfer student. Several commenters believe ESARs could be used for transfer students who were eligible for Pell Grants, but that a separate mechanism would be necessary for Pell Grant ineligibles. Several commenters believe the Financial Aid Transcript (FAT) could be used to accomplish the task of notifying the second school that verification has or has not been completed by the transfer student's first school, since a student who applies for student aid at a second school must supply the FAT before he or she can receive aid. The commenters believe the verification information could be easily reported as part of the information provided on the FAT, and that this means of communicating verification results is preferable to the practice of relying on the first school to send a letter. Several commenters express concern that the second institution must rely on information received from the first institution and that there is a potential liability to the second institution if verification was not performed correctly.

A number of commenters believe the Secretary and institutions should take whatever steps are necessary to avoid requiring students to complete the verification process more than once in an award year. Schools should develop communication tools to meet the needs of transfer students by accepting a letter or statement on the FAT containing verification status. If additional documentation is needed, schools could request copies of documents used to accomplish verification. Several commenters state that Federal regulations are not necessary to specify the form of communication among institutions. The verification procedures for transfer students should be outlined in accordance with regulations, but tailored by financial aid administrators to meet a given student population's need.

Discussion: The Secretary has clarified that it is the responsibility of the institution from which the student is transferring and the student to provide accurate verification documentation if the verification process was completed prior to transfer. If the verification process is completed by the second institution, after the student transfers, the student and the second institution are responsible for completing verification correctly. The Secretary is unable at this time to include the financial aid transcript (FAT) and Electronic Student Aid Report (ESAR) in Sec. 668.54(b)(2) as optional means of providing documentation that would exempt a student, transferring from one institution to another, from verification at the institution to which he or she is transferring. The ESAR, which is an electronic exchange of information between the schools and the central processor, would not provide the signatures that are necessary for verification of application data. Changing the FAT to include a section on verification would require that Sec. 668.19 of the Student Assistance General Provisions Regulations also be amended. These options are not practical for inclusion in this rulemaking. The Secretary believes that regulations prescribing how schools are to communicate with regard to verification of transfer students are necessary to ensure that the proper verification information and documentation is available to complete the verification process fairly and correctly. These regulations will ensure that the information and data used to assess liabilities for either the student or institution is accurate when a student receives an overaward. ED notes that transfer student's overawards and repayment of the overawards are determined in the same manner as students who do not transfer, provided that the institutions are following the applicable regulations. Therefore, the Secretary will continue to study the effects of the verification process on transfer students and the institutions attended by such students in an effort to determine whether future rulemaking on this issue could reduce burden for both institutions and transfer students.

Changes: None.

Section 668.55 Updating Information

Comments: Several commenters concur with the various proposed changes to this section: Changing the Stafford Loan updating requirements to conform to those used in other student financial aid programs; updating dependency status as a result of changes in marital status throughout the year; and requiring verification of the number of family members enrolled in postsecondary education. One commenter states that the number of family members enrolled in postsecondary educational institutions often changes from year to year, or within years, and that these changes are likely sources of error. Another commenter supports the Secretary's proposal to allow a student to update his or her marital status during the award year because updating this item would reduce inequities in aid awards. One commenter contends that consistent updating requirements for all Title IV programs will simplify the process of updating awards or status because the institution will need only one set of updating procedures. Another commenter suggests that students should be allowed

to take advantage of any increase in aid eligibility that might develop as a result of updating changes and that the Secretary not impose requirements that would allow for decreases in assistance but not increases. The updating of changes, according to one commenter, would make the updating process equal among students and would make it easier for financial aid officers to enforce the regulations. Another commenter suggests that the spirit of this proposal for consistent updating requirements appears to favor the premise that, once married, students would be considered independent regardless of age, and no parental signature would be required to certify that the student would not be claimed as a Federal tax exemption during the current year. One commenter supports the ability of students to update their dependency status as a result of change in marital status. However, the commenter believes that some further study may be required to determine appropriate effective dates for marital status changes, and suggests that only changes occurring before the first day of the last payment period should be considered for any given payment period.

A number of commenters object to the proposal that would require applicants to continually update their application information throughout the award year in the event that the number of household members attending postsecondary institutions changes. They express concern that post-disbursement adjustments of this kind could create overpayment situations for students who were eligible for a specific dollar amount of financial assistance at the time of application and that such changes involving household members may be beyond the control of these students.

One commenter questions whether institutions, which enroll a transfer student who completed verification at the first institution, will be required to recalculate eligibility for the prior year and charge the student any liabilities resulting from the recalculation. The commenter believes that, in the absence of such a requirement, assessment of liabilities incurred from updating would be unfair because students who remain continually enrolled at the same institution would be assessed liabilities, whereas transfer students would not be assessed liabilities.

One commenter believes the proposed regulations would require an institution to review every year's application to determine if changes in application information occurred and that resulting delays in the processing of awards would be burdensome for students and institutions.

The commenters are also concerned about the timely receipt of the corrected SAR, given the deadline dates for accepting a SAR, because the institution relies on the corrected SAR to determine whether the student should be eligible for any portion of the Pell Grant award based on the student's updated marital status.

Two commenters recommend that updating changes be handled on a professional judgment basis by the aid administrators and in no case should a student be in a position of repaying disbursed funds because of updating changes to marital status, dependency status or number enrolled in postsecondary institutions. Instead, the commenters propose that those changes be reflected in the subsequent year's applications. If the changes occur during an award year, but after the initial disbursement has been made, the aid administrator would note the change in applicant data and determine if any adjustments would be warranted and equitable. The same rules of documentation for all professional judgment cases would apply.

A number of commenters disagree with the proposal to include Stafford Loan applicants along with other applicants in requiring dependency status updates, even though the application was previously certified, because it would add additional frustration and complication to the delivery system and delay receipt of Stafford Loan proceeds. If the Stafford Loan application has already been certified by the institution and received a guarantee and been processed by the lender, the check must be returned and the guarantee canceled. Depending upon the internal operating procedures of the lender and the guarantee agency involved, it may take up to 60 days for the cancellation to be reflected in the database, thereby delaying the guarantee of any new application. According to the commenters, this proposal would seriously threaten the continued enrollment of applicants who do not have the resource to meet their living expenses.

Several commenters question whether the institution will be liable for repayment of a previously certified Stafford Loan that is disbursed to a student who subsequently marries and becomes ineligible for the loan.

Another commenter asks for guidance concerning an institution's discovery that an applicant did not update information during the prior year as required. The commenter suggests that, in these cases, institutions should be given the option of reducing aid for the current year by any prior year overaward amount that is discovered during the application process. The commenter finds that making adjustments of awards for a prior year is extremely burdensome.

Several commenters request clarification of the concept of overaward for the Stafford or Supplemental loan programs in view of their understanding that a student can keep a disbursed loan amount even though his or her situation later changes. The commenters also suggest that, if the updating changes are adopted, specific information that must be collected to achieve updating should be explicitly outlined so aid administrators are fully aware of what information is necessary.

Discussion: The Secretary has decided not to revise Sec. 668.55 as a result of the commenters' suggestions and to minimize administrative burden. Because of the complexity involved in updating dependency status on certified Stafford Loans and constantly updating awards throughout the year, the Secretary is retaining the requirement that an applicant may not change his or her dependency status as a result of a change in material status. For the same reason, the Secretary has retained a requirement that an applicant is not permitted to update his or her application information on a previously certified Stafford Loan application.

Changes: The proposed changes to Sec. 668.55 are deleted and the current exceptions to updating requirements will be retained. Section 668.55 will not permit applicants to update dependency status throughout the year as a result of a change in marital status. Also, applicants will not be allowed to update previously certified Stafford Loan applications. Institutions will not be required to adjust Pell Grant, campus-based or need-based ICL program assistance previously awarded to the applicant for that award year, although Sec. 668.55 (c)(2) continues to allow institutions to revise such assistance at their discretion.

Section 668.56 Items to be Verified

Comments: Several commenters strongly agree that only the elements of untaxed income listed on the tax return, excluding those itemized on schedules, should be required to be reviewed under verification. One commenter believes that the Secretary should address the issue of tax-deferred pension and savings plans withheld from earnings such as 401(k) and 403(b) plans. The commenter agrees that interest on tax-free bonds should be verified as part of untaxed income, in accordance with modifications to the tax structure which now require this income source to be reported on Forms 1040 and 1040A.

Discussion: The Secretary has limited verification of required untaxed income items to those items that an institution may verify using a tax return and excluding use of itemized schedules. The verification of contributions to tax deferred pension and savings plans withheld from earnings such as 401(k) and 403(b) plans would require documentation that varies depending upon the State and local requirements where the plan is offered. Therefore, the Secretary believes that the verification of income from tax-deferred pension and savings plans withheld from earnings may be more appropriately left to the institution's discretion.

Changes: None.

Comments: One commenter requests clarification of the phrase "unless the institution has reason to believe" with regard to the number of family members enrolled at least half-time in a postsecondary institution. A number of commenters concur with the proposed regulation that would require verification of the number of family members enrolled in postsecondary education in every year that the applicant is selected for verification. Another commenter supports the use of the Secretary's verification worksheet to verify the number of family members in the household that are pursuing postsecondary studies. Another commenter asks whether both of the dependent applicant's parents must sign the statement verifying the number in college as indicated in Sec. 668.57(c).

Discussion: Section 668.56 affords an institution the option to verify applicant data for reasons other than for conflicting documentation. The phrase "institution has reason to believe" was added to Sec. 668.56 to afford an institution the option to verify applicant data that does not conflict with other application data on file but which may conflict with non-documented information available to the institution, such as information from verbal conversations. The institution may then request additional documentation.

The Secretary has revised Sec. 668.57(c) to require applicants to verify annually the number of family members enrolled in a postsecondary educational institution because it is a continuous source of error in calculating applicant EFCs. The verification of this data element requires the signatures of both parents, if both parents' data was used to calculate the applicant's EFC. When both parents sign the verification worksheet, they are certifying that the information is correct at the time of verification.

Changes: None.

Comments: A number of commenters concur with the Secretary's proposal to require verification of a dependent Pell applicant's base year income. The commenters believe that verification of this income will not impose any additional administrative burden since this income must be verified for the campus-based and Stafford Loan programs. One commenter currently verifies student base year income. Another commenter sees this as an administrative procedure to comply with current policy, since dependent base year income is used to determine eligibility for Pell Grants.

Discussion: Verification of dependent Pell applicants' base year income is now mandated under the Higher Education Act of 1965, as amended. This income is a fixed data element in the Pell Grant Index (PGI) formula used in calculating an applicant's EFC and is subject to verification unless the selected applicant has been classified as a dislocated worker by the appropriate State Agency.

Changes: None.

Section 668.57 Acceptable Documentation

Comments: Several commenters concur with the Secretary's proposal to delete the required verification of independent student status under certain categories. The commenters believe that institutions' financial aid offices should decide whether verification of independent student status is necessary based on professional judgment. A new definition of independent student has been adopted and guidelines for institutional compliance were published in an August, 1987 Dear Colleague Letter. Another commenter suggested that the new independent student definition, as well as required documentation to demonstrate independent student status, should be included in the regulations to ensure knowledge of, and consistent application of, these regulations.

Discussion: The Higher Education Act requires a student to document his or her satisfaction of a criterion for independent student status before a disbursement of Title IV Program funds may be made. Sections 411E and 478(a) of the Higher Education Act of 1965, as amended, prohibit the Secretary from issuing regulations under the section of the Act which includes the definition of an independent student. Therefore, under current law, the Secretary cannot prescribe the specific documentation the institution must collect for verification of independent student status, and the documentation requirements based on former law must be deleted.

Changes: None.

Comments: One commenter agrees that additional verification of the number of family members in college is necessary since plans often change between the time a financial aid application is submitted and the beginning of the college term. One commenter is unsure of the circumstances that would prompt an institution to require documentation, other than for a case where the number of family members or ages of family members would cause a concern. The commenter suggests that these types of errors do not require extensive institutional documentation, and that the application and verification forms should be expanded to collect student identification numbers for all family members who are listed as attending postsecondary educational institutions to assist institutions in obtaining the required certification from schools or to search their own records to provide that data to other schools. Although aware of the impact that the number of family members in college has on an applicant's eligibility, the commenter is unclear as to the reason why it is necessary to impose those measures that the commenter believes are

costly and will cause significant delays in the processing of applications.

Discussion: The Secretary believes it is necessary to require institutions to verify annually the number of family members enrolled in college because of the frequency of changes in this area. By requiring applicants to document the names of the household members and the names of the members attending postsecondary educational institutions, institutions can reduce a significant source of error that cannot be verified using only the tax return. Collection of ID numbers would impose additional burden and processing delays for both institutions and applicants. The Secretary is unable to request student identification numbers, which are usually Social Security Numbers (SSN), for family members enrolled in postsecondary educational institutions because of the enactment of the Privacy Act of 1974. The Act prohibits an agency from denying a person any right, title or privilege based on the person's refusal to disclose their social security number unless specifically authorized by statute or the disclosure requirement predates the Privacy Act. The Department has never collected SINs, that is, social security numbers, of family members and has no statutory authorization to do so. Clearly, if the Department could not make benefit decisions based on an applicant's refusal to supply an SSN absent proper authority, the Department could never deny an applicant a benefit based on a family member's refusal to provide an SSN. Therefore, the Department could only request the SSN on a voluntary basis. Such a collection would be ineffective, making an additional burden imposed as part of the information collection excessively burdensome. Such a collection would also create processing delays for both higher education institutions and applicants. However, the Secretary is seeking to reduce applicant error and believes that requiring an applicant and the applicant's parents, for dependent applicants, or the applicant and the applicant's spouse, for independent applicants, to recertify the accuracy of the reported information concerning family members in college will reduce applicant error based on failure to correct outdated information concerning family members in college. Therefore, the Secretary has revised the regulations to provide that an applicant must verify the number of family members attending postsecondary educational institutions.

Changes: None.

Comments: One commenter asks the Secretary to consider two important factors before adopting the proposal to require income tax returns filed with the Commonwealth of Puerto Rico, the government of another U.S. territory or commonwealth, or the central government of a foreign country to be treated the same as U.S. income tax returns. Those factors include the ability of students to obtain these income documents in a timely manner, especially if the parent resides in a remote area; and financial aid administrators' access to foreign currency exchange tables necessary to convert financial information reported in foreign currencies into U.S. dollars. Another commenter believes that the use of comparable income tax returns as a means of verification is acceptable if appropriate instructions for those returns are provided by the Secretary. This commenter finds the interpretation of returns written in a foreign language or with unusual references to be difficult without proper instructions. One commenter suggested that an English translation of the Puerto Rican tax returns be included in the Verification Guide each year to assist institutions with their review of this material.

Discussion: Public Law 100-369 requires that treatment of income tax returns filed with the Commonwealth of Puerto Rico, the government of another U.S. territory or commonwealth, or the central government of a foreign country be the same as that for U.S. tax returns. The Secretary will attempt to make available English-language copies of commonly encountered foreign tax return forms or provide instructions in the Verification Guide concerning how these forms may be obtained.

Changes: None.

Section 668.58 Interim Disbursements

Comments: Several commenters support the proposed change that will enable College Work-Study (CWS) recipients to be employed for the first 60 consecutive days of the award year prior to the completion of verification, provided that there is no indication that the aid application is inaccurate. Some commenters believe this change will increase institutional flexibility without obligating institutions to employ students prior to the completion of verification. Another commenter does not believe that the phrase in Sec. 668.58(a)(2)(ii)(B) should be changed from "schools may employ students under the CWS program for the first sixty days from the date of enrollment" to "schools may employ students under the CWS program for the first sixty days of an award year." Most students do not begin their enrollment on July 1.

Discussion: The Secretary agrees with the comments received suggesting that since most students do not begin their enrollment on July 1, which is the beginning of an award year, 60 days from the beginning of enrollment provides sufficient time for most students to complete the verification process, especially since most students begin the verification process prior to enrollment. The Secretary is not requiring institutions to employ an applicant under the College Work-Study Program before the applicant completes the verification process. Institutions may exercise discretion in determining whether to provide CWS employment to individual applicants.

Changes: The proposed Section 668.58 (a)(2)(ii)(B) is revised to allow an employer to employ an eligible student under the CWS program for the first 60 consecutive days after the date the applicant enrolled for that award year.

Comments: One commenter questioned whether a school that receives Stafford Loan proceeds that are found, as a result of verification, to be in excess of the amount a student is eligible to receive, may deliver the correct amount and return the excess proceeds to the lender. Another commenter believes that it is not helpful to allow schools to make payments, and then hold the college liable if awards must be subsequently reduced because of changes made as a result of verification. The commenter feels that the schools should not be placed in a position of assuming financial liability because of student error or behavior. One commenter also recommends that Stafford loan proceeds be held for sixty days instead of forty-five.

Discussion: Institutions are permitted to deliver the correct amount of Stafford Loan proceeds to students who are found to have proceeds in excess of their eligibility as a result of new or adjusted information acquired during verification, and return the excess proceeds to the lender. The Secretary sets forth a procedure in Sec. 668.58(d) for institutions to follow when the amount of previously certified Stafford Loan

proceeds exceeds the student's need for a loan based on verified information. The Secretary believes that institutions must use discretion when providing interim disbursements of loan proceeds to applicants prior to the completion of verification. If the excess funds cannot be eliminated in subsequent disbursements, the institution must return the loan proceeds to the lender.

The Secretary believes that forty-five (45) days is a sufficient period of time for holding the Stafford Loan proceeds pending completion of the verification process. Generally, applicants will complete the verification process within the 45-day period.

Changes: None.

Section 668.59 Consequences of a Change in Application Information

Comments: A number of commenters agreed with the proposed $200.00 tolerance for all Title IV programs. One commenter believes that this change will encourage more careful completion of, and fewer mistakes on, the original aid application because financial aid officers will make a more concerted effort to inform students about proper completion of their forms and likely sources of error. Another commenter feels this change will improve consistently across Title IV programs and reduce overawards, making additional funds available to other needy students. This commenter feels that the change in tolerance levels will also decrease debt burden for some students who would otherwise receive larger loans than they would be qualified to receive but for the tolerance. Two commenters state that the change will make it easier for institutions to administer financial aid. One commenter believes the new tolerance may result in more recalculation work on the part of a financial aid officer, but will undoubtedly result in stricter compliance with the stated tolerances. The commenters have found over the years that the dual tolerances are confusing to new aid officers, and confusion results in errors which result in improper awards.

Several commenters object to the proposal to change the amount of the dollar tolerance for the Stafford Loan and campus-based programs because they believe it will increase burden for both educational institutions and students. One commenter states that reducing the amount of income variance permitted under the tolerance options will have the net effect of requiring more students to correct and reprocess their applications for student aid. Another commenter strongly recommends that the Secretary leave the tolerance at the present $800 level for Stafford Loan and campus-based programs because, the commenter contends, a significant part of the problem of application error is caused by the working of the questions and the layout of the forms. Another commenter thinks it would not be appropriate to apply the tolerance, previously used exclusively for Pell Grants, to all Title IV programs since the formulas are not similar in their application or results. The commenter suggests that application of a $200 tolerance could make a substantial difference in a Pell Grant award, but little or no difference in the Stafford loan, and that alignment of programs by utilizing the same dollar tolerance does not address the issue of consistency. Several commenters find that the tolerance level of $800 for campus-based financial assistance is extremely helpful in getting financial assistance to students in a timely manner, and that the $800 tolerance makes little difference in the amount of eligibility for these students. The commenters propose that the tolerance for campus-based, Stafford Loan, and Pell Grant programs be placed at $800 rather than the proposed $200. One commenter reminds the Secretary that students are encouraged to file for financial aid early using estimated IRS tax forms and that many taxpayers do not file tax returns in January, so that the $200 tolerance will result in an increased number of recalculated financial aid forms.

Discussion: The Secretary concurs with the commenters as to the potential burden resulting from reducing the Stafford Loan tolerance and has decided not to revise the tolerance as stated in proposed Sec. 668.59(b) of the NPRM but to retain the $200 tolerance for the Pell Grant Program and $800 tolerance for the campus-based and Stafford Loan programs that are contained in the current regulations.

Changes: The current tolerances in Sec. 668.59(b) will be retained and the change proposed in the NPRM will not be made.

Comments: Several commenters concur with the proposal to delete the Zero Pell Grant Index (PGI) Charts. They find the charts to be confusing and the institutions often find it necessary to recalculate the PGI. A few commenters find the Zero PGI charts to be valuable and time-saving references, and they do not agree that these charts are too complex. These commenters encourage the Secretary to reconsider the discontinuation of the Zero PGI Charts as a resource.

Discussion: The Secretary concurs with the commenters who advocate retention of the Zero PGI Charts and will, therefore, continue to annually provide the Zero PGI Charts in the Verification Guide. The charts will no longer be published in the **Federal Register**.

Changes: Section 668.59 has been revised. The change proposed in the NPRM, to delete the Zero PGI Charts, will not be made.

Section 668.60 Deadlines for Submitting Documentation and the Consequences for Failing To Provide Documentation

No comments.

Section 668.61 Recovery of Funds

Comments: One commenter believes that the recovery of overawards received by applicants, as a result of interim disbursements pending completion of verification, is unduly harsh to eligible institutions and to the students who attend them. The commenter suggests that the problem of overpayments resulting from interim disbursements does not appear to be widespread and does not affect the integrity of the needs analysis which underlies the Federal financial aid programs. Therefore, the commenter suggests that this requirement be deleted from the final regulations. Another commenter states that, while consistency of definition is important, the proposed regulations require recovery of funds that may already have been disbursed before the overaward is determined based on the updated status. Because those funds are beyond the control of the institution at that point, the commenter suggests that the regulations be amended to include provisions for adjusting disbursements subsequent to an overaward and, if an adjustment is not possible, to consider the overaward as a resource for subsequent awards.

Discussion: The Secretary has decided to adopt the proposed change to Sec. 668.61 as published in the NPRM because the commenters' concerns about overawards should be substantially alleviated by the retention of the current Sec. 668.55, in lieu of requiring updating of dependency status and household size throughout the year. The Secretary believes that an overaward caused by updating adjustments can be eliminated in most instances by using the overaward procedures in Sec. 668.61.

Changes: None.

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Section 668.12 Institutional Participation Agreement

Comments: As mentioned previously in connection with opposition to the Secretary's imposition of limits on conversions, two commenters were concerned that students attending a location that becomes freestanding would lose financial aid because of an institution's technical change in status.

Discussion: The commenters characterized the change in status of a location from a branch of an institution to a freestanding, independent institution as a technical change, but the establishment of a new institution is a fundamental change. Further, the owner of an institution that changes status has control over the decision to make change and some control over the timing of the change. While students attending a location are generally no longer eligible to receive title IV, HEA program funds at that location as of the date the location becomes a freestanding, independent institution, the owner can minimize the potential disruption. See the provisions of 34 CFR 668.25. Further, affected students have the option of seeking student financial assistance at another already eligible location or institution. While some students may lose financial aid because of an institution's change in status, the need to stem the abuse surrounding conversions is greater than the need to protect the eligibility of a few, potentially affected students.

With respect to timing, a further question arises regarding the date on which the location is converted to a freestanding, independent institution. In general, for an institution to make one of its locations a freestanding, independent institution, it must get the approval of its accrediting association and its State licensing agency. Accordingly, the Secretary determines that an institution has become a freestanding, independent institution when it is both accredited by its accrediting agency as a freestanding institution and approved by its State licensing agency to be a freestanding, independent institution. While students are no longer eligible to receive title IV, HEA program funds as of that date, the institution begins to satisfy the two-year rule as of that date. Section 668.12 has been revised to reflect this provision.

Changes: Section 668.12 is revised to indicate that a program participation agreement no longer applies to or covers a location of an institution when that location ceases to be part of the eligible institution, as would be the case when it becomes a freestanding, independent institution.

Regulatory Flexibility Act Certification

Comments: Four commenters disagreed with the Secretary's Regulatory Flexibility Act Certification. One commenter noted that the certification holds that the regulations would not have a significant economic impact on a substantial number of small entities. This commenter stated that the changes would have an impact only on small entities. Another commenter also said the proposed rule would have a significant negative impact on small entities. Another commenter also said the proposed rule would have a significant negative impact on small entities. A third commenter stated that, contrary to the Secretary's certification, the proposed regulations would have a significant economic impact on a substantial number of small schools and the students they will serve in the future. The fourth commenter argues that the development of a new teaching site requires considerable expenditures by the institution and that the Secretary's certification ignores these costs. This commenter also took umbrage with the inference that the regulations would not deny existing eligible institutions access to Federal funds, but only would inhibit expansion financed by access to title IV, HEA program funds.

Discussion: The Secretary disagrees with these arguments. The Regulatory Flexibility Act is concerned with the significant impact the regulations might have on a substantial number of small entities. Currently, there are approximately 8500 eligible institutions. In fiscal year 1991, 518 institutions applied for initial eligibility. Most of these institutions were new institutions. A minority of the applicant institutions had previously been locations of other eligible institutions. Of these, many were not small entities. Thus, the certification is correct.

Changes: None.

January 7, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations to put in place a procedure for determining the immigration status of noncitizen applicants for student financial assistance under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA). The purpose of the immigration-status confirmation procedure is to relieve substantially most institutions from the burden of manually inspecting the immigration-status documents of all noncitizen applicants for Title IV, HEA financial assistance.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register**, or later if Congress takes certain adjournments, with the exception of §§668.133, 668.134, and 668.135. Sections 668.133, 668.134, and 668.135 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations put in place requirements that apply to all institutions that participate in the Title IV, HEA student financial assistance programs. For purposes of this subpart, the Title IV, HEA programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-

Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

On April 29, 1991, the Secretary published a notice of proposed rulemaking in the **Federal Register** (56 FR 19782) with regard to the immigration-status confirmation procedure. The Secretary believes that this procedure will assure that Federal student financial assistance dollars are used to provide educational opportunities only to U.S. citizens, U.S. nationals, or noncitizens who prove that they possess an immigration status that satisfies the eligibility criteria for Title IV, HEA financial assistance set forth in 34 CFR 668.7(a)(4). Specifically, 34 CFR 668.7(a)(4)(ii) provides that a student is eligible for Title IV, HEA assistance if the student provides evidence from the U.S. Immigration and Naturalization Service (INS) that he or she is a permanent resident of the United States or is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

The immigration-status confirmation procedure will relieve most institutions of a substantial portion of the administrative burden currently associated with identifying the immigration status represented on immigration documents and determining whether those documents are authentic. At the same time, the procedure will reduce the potential for fraud and abuse in the Title IV, HEA programs by improving the institutions' ability to determine whether noncitizen applicants are eligible for Title IV, HEA assistance under §668.7(a)(4)(ii).

The confirmation procedure will improve the efficiency of the Title IV, HEA programs and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's AMERICA 2000 strategy to move the Nation toward achieving the National Education Goals.

These regulations establish procedures for institutions to use in determining the eligibility of noncitizen applicants for Title IV, HEA benefits. The term "confirmation" of immigration status as set forth in Subpart I is equivalent to the term "verification" of immigration status that commonly is used by the INS and other agencies using the INS's immigration-status verification system. The Secretary substituted the term "confirmation" in place of the INS term "verification" to avoid confusion with the process of verifying the student's Expected Family Contribution in 34 CFR 668, Subpart E. Immigration-status confirmation under Subpart I and verification under Subpart E are two separate procedures and institutions may not count confirmations under Subpart I toward the 30 percent verification ceiling mandated by section 484(f) of the Higher Education Act of 1965, as amended (HEA).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 68 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 668.132 Institutional Determinations of Eligibility Based on Primary Confirmation

Comments: Several commenters supported these provisions and several others objected. Many commenters disagreed with the Secretary's contention that use of the primary confirmation process to replace determining immigration status by inspecting documents manually would reduce administrative burden on institutions. Two commenters expressed concern that some student records that successfully matched with INS data in a previous award year did not match in the current award year and questioned the need to impose secondary confirmation on institutions because of Federal data errors. Other commenters suggested that current primary confirmation performance is poor, that the INS data base is not adequately updated and maintained, and that the Secretary's claim that 80 percent of noncitizen applications would match with INS data using primary confirmation is unrealistic. Several commenters perceived a conflict in that this section prohibits institutions from requiring documentation if the message on the output document confirms the student's eligible noncitizen status, while §668.133 of the proposed regulations requires an institution to request document and follow secondary confirmation procedures if the output document confirms the student's eligibility but the institution has conflicting information.

Discussion: The Secretary agrees with those commenters who maintain that the primary confirmation process reduces the burden on institutions. At the same time, the Secretary is aware that the percentage of primary confirmation matches was abnormally low during the 1990-91 award year because the primary confirmation system was taken out of operation for several months while the Department and INS brought the matching program into compliance with the Computer Matching and Privacy Protection Act of 1988, that became effective in January 1990. The Secretary believes that this operations hiatus explains why some applicants who matched in a previous award year did not match in the current award year. The Secretary expects that continuous operation of the matching system during the entire 1991-92 award year and thereafter should alleviate much of the concern expressed about institutional burden and the quality of the INS data base. Indeed, recent analysis of 1991-92 data reveals that the percentage of noncitizen applicants confirmed through the primary confirmation process is approximately 70 percent.

The Secretary disagrees that there is a conflict between instructions given in §668.132(a) and §668.133. Section 668.132(a) states that "except as provided in §668.133(a)(1)(ii)," the institution must determine a student to be an eligible noncitizen if the institution receives an output document that confirms the student's immigration status. An institution cannot determine a student to be an eligible noncitizen in accordance with §668.132(a) if it has conflicting information concerning the student's immigration status. Under §668.133(a)(1)(ii), if the institution has conflicting information, the institution must obtain, from the applicant, documentation of immigration status and submit that documentation to the INS for secondary confirmation.

Changes: None.

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

Comments: Several commenters protested that secondary confirmation is an INS enforcement exercise that is being inappropriately assigned to educational institutions and that exchanges of data should take place only between the student and INS. One commenter questioned why the burden of processing secondary confirmation requests should be placed on the institution when the student can obtain such information directly from INS or the Secretary's central processing system. Many commenters questioned whether the problem of citizenship fraud and abuse in the Title IV, HEA programs is serious enough to warrant mandatory secondary confirmation. Many others were concerned that secondary confirmation procedures are administratively burdensome and will delay processing of Title IV, HEA assistance for many eligible noncitizen students. Two commenters questioned why secondary confirmation is needed when the institution can make a reasonable determination of the student's eligibility using documents submitted by the student. Several commenters expressed their desire to have secondary confirmation available as an option and to be permitted to continue the current practice of determining noncitizen eligibility through a manual examination of the student's immigration-status documents. A number of commenters suggested that secondary confirmation should be required only in cases of conflicting or irreconcilable documentation. One commenter suggested that institutional confirmation of a student's immigration status be required only once during the student's enrollment at the institution. Another commenter proposed that, prior to issuing final regulations, the Secretary should conduct a study to compare the costs and benefits of the proposed regulations. Another commenter questioned how an output document could be incorrect unless the Secretary suspects inadequacies in the INS data base. One commenter questioned whether §668.133(b)(1) is intended to prohibit the use of secondary confirmation to identify fraudulent documentation in cases where the student changes his response on the application from "eligible noncitizen" to "U.S. citizen" or "U.S. national."

Discussion: With regard to comments concerning mandatory use of secondary confirmation, the Secretary no longer has authority to prescribe regulations limiting use of this process. Section 484(h)(4)(B) of the Higher Education Act of 1965, as amended, now requires an institution to request secondary confirmation if a student's claim of eligible noncitizen status is not confirmed using primary confirmation and if that student submits documents that the institution determines constitute reasonable evidence of the student's immigration status.

The Secretary is carefully considering the suggestion of a one-time-only confirmation of the immigration status of a student during the student's enrollment at a given institution. For the 1993-94 award year, the Secretary is investigating the possible use of an automatic renewal of the primary confirmation message on the output documents of individuals having an eligible noncitizen status that is confirmed using primary confirmation.

The commenter's suggestion that a cost-benefit analysis be undertaken before putting in place these regulations is well taken. The Secretary has performed a recent analysis, as required by the Compute Matching and Privacy Protection Act of 1988, that indicates that the operational costs of this computer match to the Federal Government are $35,400, as compared to $650,000 in administrative savings to institutions that are no longer required to examine the immigration-status documents of 70% of noncitizen applicants. Secondary confirmation is not monitored at the Federal level, however, so the costs of secondary confirmation are not factored into this information, such as that provided by the commenters, to gain a rough assessment of the total costs and benefits of this program.

The Secretary disagrees with the commenter who presumes that any possibility of conflicting information in the message on the output document is an indication that the INS data base used for primary confirmation is inadequate. The regulations recognize that the immigration status of an individual might change and that conflicts of information are inevitable when either documentation or data base information becomes outdated. Since §668.14(f) of the existing regulations requires an institution to "identify and resolve discrepancies in the information it receives from different sources," these regulations offer the secondary confirmation process as a way of reconciling these conflicts.

The Secretary does not believe that §668.133(b) would prohibit an institution from requesting secondary confirmation for a student who changes his or her response on an application from "eligible noncitizen" to "U.S. citizen" or to "U.S. national." If the institution has reason to believe the student's citizenship claim is incorrect or that a student's citizenship documentation may be fraudulent, the institution must obtain additional information through secondary confirmation. Furthermore, any information related to a false claim of citizenship should be referred to the appropriate authorities for investigation in accordance with §668.14(g).

Changes: None.

Section 668.134 Institutional Policies and Procedures for Requesting Documentation and Receiving Secondary Confirmation

Comments: Several commenters suggested that establishing additional policies and procedures is overly burdensome and unwarranted. One commenter questioned why institutions were being required to establish their own policies and procedures instead of complying with guidelines already set by the Secretary. Several others have a deadline for submitting documents and requesting guidance concerning the actions to be taken if documents are submitted after the deadline has passed. One commenter requested that the Secretary provide institutions with sample explanations of the needed documentation. Another commenter requested clarification concerning whether the phrase "a clear explanation" means that an institution would be required to provide instructions to students in their native languages.

Discussion: The Secretary disagrees that the requirement for institutional policies and procedures is unwarranted and burdensome or that the Secretary should impose standard policies and procedures for all institutions. This section is similar to requirements set forth in §668.53 of existing regulations, which provides guidance to institutions in establishing policies and procedures that deal with verifying information provided by a student that is used to calculate the student's eligibility for financial aid. In the same fashion, the Secretary intends to permit significant institutional

discretion in designing procedures for requesting documentation and confirming a student's immigration status. For example, an institution will need to give a student written instructions that are clear and complete, but it need not interpret this provision as a requirement for the instructions to be provided in an applicant's native language. By requiring that an institution establish written policies and procedures, the Secretary seeks to ensure that the institution establishes each student's immigration status and eligibility for Title IV HEA financial assistance in an equitable and consistent manner.

To preserve as much institutional discretion as possible, the Secretary has chosen not to set arbitrary deadlines for the submission of documents. Rather, the Secretary has created parameters within which institutions may set their own deadlines. These parameters are necessary because of existing statutory requirements and practical considerations regarding the time needed to process Title IV, HEA applications. Specifically, in accordance with the Computer Matching and Privacy Protection Act of 1988, an institution must allow a student a minimum of 30 days to collect and submit documentation to the institution in support of his or her claim of eligible noncitizen status.

Sample documentation of immigration status already has been provided by the Secretary in Chapter 2 of the Federal Student Financial Aid Handbook, which is published annually. These regulations are not introducing any changes in the immigration-status documents that institutions examined in the past to determine noncitizen eligibility.

Changes: None.

Section 668.135 Institutional Procedures for Completing Secondary Confirmation

Comments: Several commenters supported the procedure. Many commenters, however, protested that the 10-business-day deadline for institutions to initiate secondary confirmation after receiving immigration-status documentation from the student is unrealistic during peak workload periods. Two commenters questioned whether institutions are required to initiate secondary confirmation for students who applied to the institution but have not been admitted and whether the 10-business-day countdown should begin if the institution has received immigration-status documents for a student but no output document for that student. One commenter requested guidance concerning the consequences if an institution fails to meet the deadline for submitting documentation to INS.

Discussion: The Secretary does not agree that 10 business days is insufficient time to complete the request portion of the G-845 and to submit it to INS. The 10-business-day deadline represents a balance between the need for sufficient time to confirm and authenticate a student's immigration status with INS and the need to avoid undue delays in assistance to eligible students.

With regard to the comment concerning a double standard assigned to INS and institutions in complying with 10-business-day deadlines, the Secretary cannot regulate another Federal agency, but can enter into agreements with another agency stating that certain standards of performance are expected by both parties. Accordingly, the Secretary has an operational computer matching agreement in which INS has agreed to the 10-business-day turnaround time to respond to requests from institutions for secondary confirmation.

The 10-business-day deadline for institutional initiation of secondary confirmation after receiving documentation from the student applies whether or not the student has been admitted.

With regard to when the 10-business-day countdown begins, if the institution receives immigration-status documentation without an output document, an institution should not consider the 10-business-day period to begin until it has received both the student's immigration-status documents and the output document. The output document is a required component of that documentation as it contains important information related to the results of primary confirmation. The requirements in §668.135 apply only when a student is required to undergo secondary confirmation. An institution will not be able to determine whether secondary confirmation is mandatory until the institution has received the student's output document.

Institutional penalties for missing this deadline will be consistent with program review policy to enforce all applicable regulatory provisions.

Changes: None.

Section 668.136 Institutional Determination of Eligibility That Are Not Based on Primary Confirmation

Comments: One commenter suggested that it invites abuse to have a policy permitting institutional disbursements of Title IV, HEA assistance prior to the institution obtaining a response from INS concerning secondary confirmation. Several commenters were concerned that the need to track the 15-business-day period subsequent to initiation of secondary confirmation would add to institutional burden. A number of commenters felt that any disbursement of assistance prior to obtaining a response from INS would place potential liability on the institution and, for this reason, few institutions would use this option. Several commenters expressed concern that the preamble's statement that "an INS determination of a student's immigration status * * * should precede any decision by the institution with regard to the student's eligibility for Title IV, HEA assistance" would prevent the institution from making routine preliminary decisions about student eligibility in areas other than immigration status. Two commenters suggested that the term "sufficient documentation" in proposed §668.136(b)(2) be clarified as "documentation that, if valid, demonstrates that the applicant is an eligible noncitizen." One commenter suggested that to avoid delays to students institutions should be allowed to telephone INS when the 15-business-day period is exceeded. Another commenter suggested that the 15-business-day period be lengthened to 20 or 30 business days to allow more time for postal delivery.

Discussion: The Secretary does not agree that provisions providing for disbursement of assistance pending receipt of INS responses to secondary confirmation requests invite abuse. An institution will continue to be responsible for making certain that noncitizen applicants provide acceptable evidence of eligible noncitizen status before disbursing Title IV, HEA assistance.

The Secretary also wishes to emphasize that these regulations do not impose liabilities on institutions for

erroneous grant payments or loan disbursements to a student discovered to be ineligible as a result of secondary confirmation if the institutions can show documented evidence of immigration status that meets the requirements of §668.7(a)(4)(ii).

The Secretary believes that the 15-business-day limitation subsequent to initiation of secondary confirmation is necessary to prevent unnecessary delays in processing the student financial aid applications of eligible noncitizens.

Contrary to one commenter's concern, the Secretary's desire to obtain an INS determination of a student's immigration status prior to the institution's determination of eligibility does not prevent an institution from engaging in an activity such as providing preliminary estimates of financial aid eligibility.

The Secretary disagrees with the commenter who requested that the proposed use of the term "sufficient documentation" be changed to "documentation that, if valid, demonstrates that the applicant is an eligible noncitizen." "Sufficient" indicates that the institution has in its possession documents with which it is able to make a decision that a student satisfies the requirements of §668.7(a)(4)(ii). The commenter's proposed revision presupposes that the institution will determine the student to be eligible when, in fact, the institution may determine that the documents are insufficient to determine eligibility and, as a result, may deny Title IV, HEA assistance to the student.

The Secretary does not agree with the suggestion that institutions should be allowed to telephone INS to obtain status information when the 15-business-day period is exceeded. Although procedures differ somewhat among INS field offices, the Secretary recognizes that institutional access to INS by telephone has become more limited in recent years because of the large increase in immigrants and other groups seeking INS services. The Secretary wishes to cooperate with INS, to the fullest extent possible, in developing a more automated and efficient means of gaining access to information than is possible if the institution must await responses to telephone calls or inquiries by letter.

Finally, the Secretary does not agree with the suggestion that the 15-business-day period be lengthened to 20 or 30 business days. Fifteen business days, or three calendar weeks, should be the maximum amount of time allowed given INS's commitment to a 10-business-day response and the Secretary's desire not to delay assistance to eligible noncitizens undergoing secondary confirmation.

Changes: None.

Section 668.137 Deadlines for Submitting Documentation and the Consequences of Failure to Submit Documentation

Comments: One commenter sought clarification from the Secretary concerning whether this section is limited in scope to immigration-status confirmation or if it has broader application. Two commenters questioned the need for an institutionally set deadline for the student to submit immigration-status documents to the institution, and they also questioned whether the institution has the right to deny assistance if this deadline is not met. Another commenter suggested that this section is inconsistent with the Computer Matching and Privacy Protection Act of 1988, which requires a minimum period of time for the student to submit documents as a way of contesting the results of the computer matching program.

Discussion: The Secretary assures the commenter seeking clarification regarding applicability of this section that the regulations are limited in scope to institutions considering claims by students to be eligible noncitizens under §668.7(a)(4)(ii). With regard to the need for an institutionally set deadline, the Secretary believes that the institution, which is being given responsibility for initiating secondary confirmation requests, also should be given the flexibility for setting a deadline that is consistent with its own procedures.

The Secretary does not agree with the commenter who expressed doubt that the institution has authority to deny assistance to an applicant who does not meet this deadline. The Secretary points out that §668.60 already has given an institution similar authority when an applicant fails to provide requested documentation with regard to verification of the student's application data for purposes of calculating the student's award.

The Secretary agrees with the commenter that there is a statutory requirement setting a minimum time period for the student to submit evidence of eligible noncitizen status; it is required by section 2 of the Computer Matching and Privacy Protection Act of 1988.

Changes: Paragraph (a) is revised to allow the student a minimum of 30 days from the date the output document is submitted to the institution to submit documentation of eligible noncitizen status to the institution. Because this revision conflicts with the remainder of proposed paragraph (a) to the extent that the 30-day period would allow an applicant to submit immigration-status documents after the end of the award year or period of enrollment, the Secretary is deleting the remainder of this paragraph.

Section 668.138 Liability

Comments: Several commenters expressed concern that this section would hold institutions liable for disbursements made as a result of eligibility determinations that subsequently are found to be in error after receipt of secondary confirmation responses. One commenter requested that the Secretary explain how an institution could make an error when the immigration-status documentation satisfies existing regulations. Another commenter suggested that, since the institution would be relying on documentation supplied by the student, the student should be liable unless the documents do not support the student's claim to be an eligible noncitizen.

Discussion: The Secretary agrees with the commenters' assertions that liability should not be imposed on the institution for the institution's erroneous determination that a student is an eligible noncitizen as long as the institution can justify a disbursement by showing documented evidence of eligible immigration status as required by §668.7(a)(4)(ii). The intent of this section was to impose liability on an institution that disburses Title IV, HEA assistance despite having immigration-status documentation, or an INS response to a secondary confirmation request, that does not support the student's eligibility claim.

Changes: Section 668.138(c)(3) is added to clarify the Secretary's intent concerning institutional liability.

Section 668.139 Recovery of Payments and Loan Disbursements to Ineligible Students

Comments: Two commenters suggested that §668.139(d) be rephrased to require the institution to repay the "ineligible portion of a loan disbursement" to the lender and to notify the guarantee agency when the institution makes a disbursement to an ineligible student. These commenters suggested that the Secretary include provisions authorizing the institution to obtain the promissory note for the purpose of loan collection and that the Secretary should address repayment of interest and special allowances paid on the "ineligible portion." One commenter proposed that for Federal PLUS loans institutions should be permitted to accept a statement attesting to the eligible noncitizen status of the parent of an eligible noncitizen applicant. Another commenter requested clarification about whether loans to ineligible students could be reinsured as exempt claims as provided in §682.405(a)(2).

Discussion: The Secretary does not agree that §668.139(d) should be revised to assign institutions the responsibility for repaying the "ineligible portion" of a Federal Stafford, Federal SLS, or Federal PLUS loan to the lender. An institutional determination of a student's eligible noncitizen status affects the student's eligibility for all Title IV, HEA assistance. The student will be liable for repayment of the entire disbursement should the institution's determination of eligibility provide to be in error. Any discussion of repayment of a portion of the disbursement is not relevant in this situation.

The comments with regard to guarantee agency notification and refunds of interest and special allowances are valid comments and should be addressed within the context of all recipients of Title IV, HEA assistance who subsequently are determined to be ineligible. Noncitizens represent only small fraction of the population that might be affected.

The Secretary does not agree that statements of eligible noncitizen status from Federal PLUS loan parents should be accepted in lieu of actual INS immigration-status documents and believes that such statements do not provide satisfactory evidence of immigration status.

With regard to the comment concerning reinsurability, the Secretary holds the position that the amount of the disbursement to an ineligible student is not reinsured.

Changes: Paragraph (d) is revised to insert "repay" in place of "restore."

March 10, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUPPLEMENTARY INFORMATION: The purpose of these regulations is to improve the efficiency of Federal postsecondary education programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

These regulations modify three features or elements of the Department of Education's (Department's) procedures regarding administrative actions taken to enforce program requirements. First, the regulations permit parties to file certain documents in administrative proceedings by facsimile. Second, the regulations clarify and explain the administrative actions the Secretary may take when an institution or part of an institution ceases to satisfy applicable eligibility requirements. Third, the regulations clarify and explain the manner in which the Secretary uses the emergency action authority available under section 487 of the HEA.

Filing Documents by Facsimile

In recognition of the increasing reliability and convenience of facsimile technology, these regulations reflect the Department's effort to accommodate the public by revising the existing regulations to permit the submission of certain filings in Department administrative proceedings by facsimile. The regulations change the existing regulations only regarding filings that the Department reasonably can accept by facsimile, given its existing facsimile technology and resources.

Specifically, the Department's existing regulations governing administrative proceedings pursuant to 34 CFR 600.41 and subparts B, G, and H of part 668 of title 34 of the Code of Federal Regulations are amended to permit hearing requests and certain other documents required in administrative proceedings to be filed by facsimile, as well as by hand-delivery or mail. Where a filing may be permitted by facsimile, the Department will give the affected party timely written notice of the name and facsimile telephone number of the department official to whom a facsimile filing must be transmitted. The existing regulations also are amended to provide that documents submitted by facsimile are filed on the date the facsimile transmission is sent, that parties who file documents by facsimile are responsible for confirming that a complete and legible document is received by the Department, and that the hearing officer or other designated department official may require a follow-up hard copy of documents filed by facsimile. Finally, these final regulations state that the Secretary discourages facsimile transmission of documents longer than five pages.

Loss of Eligibility and Emergency Action

On August 7, 1990, the Secretary promulgated final regulations amending 34 CFR parts 600 and 668.55 FR 32180. Those amendments made two principal changes to those parts: They added 34 CFR 600.41, which provides an opportunity for an administrative appeal under section 487(c) of the HEA for an institution that the Department of Education (ED) considers no longer to qualify as an eligible institution under the HEA, and revised 34 CFR 668.83 to conform to the statutory amendments to the HEA that expressly authorized ED to take emergency action against an institution. The Secretary concurrently issued a notice of proposed rulemaking (NPRM) on these same regulations, inviting public comment on the provisions published that day as final regulations. 55 FR 32186. Based on a careful consideration of both the public comments received in response to the NPRM and ED's experience in proceedings conducted under the final regulations, the Secretary is making in these final regulations a number of significant revisions to the August 7, 1990 regulations.

Consequences of Loss of Eligibility

A number of clarifying and conforming changes are made here to those provisions, including §600.41, that explain the actions an institution may take after a loss of eligibility

occurs or an emergency action is imposed. On July 19, 1991, the Secretary amended 34 CFR 668.25 to prescribe the actions to disburse Title IV, HEA program funds that an institution may take after it loses eligibility. 56 FR 33341. Under the amended §668.25, an institution that loses its eligibility to participate in Title IV, HEA programs during a payment period, but continues to provide educational instruction until the scheduled completion of the payment period or period of enrollment, may make payments of Title IV, HEA student financial assistance to a student who is enrolled on the date of the institution's loss of eligibility in the following manner: For a Pell Grant or campus-based program aid, the institution may disburse funds for the payment period during which the loss of eligibility occurred if the institution made a commitment to the student for that aid prior to the date on which the loss of eligibility occurred. 34 CFR 668.25(c)(1). The institution may release to the student all proceeds of a Federal Family Education Loan Program loan (including a Federal Stafford Loan, Federal PLUS loan or Federal SLS program loan) made for an enrollment period that began prior to the loss of eligibility if the institution had released at least one disbursement of that loan to the student before the date of loss of eligibility. 34 CFR 668.25(c)(2).

The Secretary may require an institution to meet its closeout obligations regarding audits, disposition of records, transfer of Perkins Loans, and satisfaction of refund obligations before it may make, or receive additional funds for, these final disbursements. If the loss of eligibility affects only a location or educational program of the institution, the Secretary may limit the eligibility of the institution by requiring the institution to follow a particular procedure to ensure that title IV, HEA program funds are not thereafter used for the ineligible location or program.

The same standards are meant to be applied in terminations of eligibility under both 34 CFR part 668 and part 600; the specific provisions previously contained in 34 CFR 668.25(c) governing these disbursements of Title IV, HEA program funds also were included in 34 CFR 668.94, which, in turn, was referenced in §600.41(d). To clarify that the same rule applies in terminations based on loss of eligibility and terminations for violation of participation requirements, both §§600.41(d) and 668.94(b) are being revised here to refer to §668.25.

Loss of Institutional Eligibility; Consequences With Respect to Obligations Under the Federal Family Education Loan Program.

ED's recent experience applying regulations that address the consequences of loss of institutional eligibility for FFELP loan transactions suggests the need to clarify the effect of §600.40 (and §668.25) on the obligations of both institutions and borrowers. Both regulations address the institution's responsibility to ED with respect to a loss of eligibility. They permit the institution to deliver loan proceeds to students after the effective date of the loss of eligibility, but the regulations are not intended to create any other rights for student borrowers or to suggest that borrowers are excused from repaying loans received to attend that institution.

Section 668.25(c) requires an institution that loses eligibility to return to the lender the proceeds of FFELP loans it receives other than proceeds of loans that were partially disbursed to the borrower prior to the date of the loss of eligibility. This direction in §668.25(c) refers to loan proceeds received from the lender by check or electronic funds transfer and held by the institution for delivery to the borrower, not loan proceeds that have already been delivered to the borrower and applied to educational expenses.

The institution becomes subject to §668.25 after the termination becomes final with respect to loan proceeds it still holds for delivery or thereafter receives from the lender. However, under §600.40(a) as currently in effect and as amended in these regulations, the effective date of the loss of eligibility is the date on which the institution ceased or failed to meet an element of the standards for eligibility. In proceedings under §600.41, that date will ordinarily be well before the date on which the termination action becomes final. The institution may have delivered loan proceeds and disbursed other Title IV, HEA program assistance after the effective date, and the Secretary holds the institution liable for the full costs to the government of that aid provided after the effective date of the loss of eligibility.

For Title IV, HEA program assistance provided from Federal funds ED advanced to the institution, the cost of that assistance is clearly the actual amount of Federal funds the institution provided to students after that effective date. However, under the FFELP, ED provides no Federal funds to the institution itself. The financial loss to the government caused by guaranteed loans made after the effective date of the loss of eligibility is not the amount of funds advanced on guaranteed loans received for its students, because those funds are advanced by lenders, not ED. Rather, the loss to the government is the cost of the subsidies paid to holders of those loans for which the government is contingently liable under its reinsurance agreements with guarantee agencies.

To recoup the loss to the government for the FFELP loans received by borrowers after the effective date of the loss of eligibility, therefore, ED holds the institution liable for the actual cost of the subsidies paid to lenders and the cost of defaults on those loans. ED passes the cost of defaults on to the institution either by requiring the institution to pay ED the actual amount of reinsurance payments that will be paid on those loans, or by requiring the institution to assume the risk of loss on those loans by purchasing those loans from the lender or guarantee agencies that now hold them.

Where ED chooses to require an institution to purchase from their respective holders those FFELP loans made after the effective date of the institution's loss of eligibility, ED does no more than remedy the unauthorized imposition on the government of contingent liability for defaults on those loans. If the institution in fact purchases those loans from the holders, the loans no longer qualify for Federal reinsurance or subsidies. Further, it is unlikely that the guarantee agency will continue to insure the loans. However, the loans would be enforceable by the institution, according to their terms, as its own receivables.

Because ED regulations have permitted the lender to rely in good faith (absent an origination relationship) on representations made in FFELP loan applications by both the borrower and the institution, ED generally holds the lender harmless from the consequences of a lapse of institutional eligibility. To hold the lender harmless in these situations, ED must continue to subsidize and reinsure those loans that the ineligible institution does not purchase. Whether these loans are assigned to the institution or, as is more likely, the loans remain with the lender or guarantee agency, ED considers the loss of institutional eligibility to affect directly only the liability of the institution for Federal subsidies and reinsurance paid

on those loans. In either case, the borrower retains all the rights with respect to loan repayment that are contained in the terms of the loan agreements, and ED does not suggest that these loans, whether held by the institution or the lender, are legally unenforceable merely because they were made after the effective date of the loss of institutional eligibility.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, and appropriate sections of the regulations are referenced. Other substantive issues are discussed under the section of the regulations to which they pertain. Among the minor changes made to current regulations on which no comments were received and which are not otherwise addressed in this part are the inclusion of certain definitions in part 668 previously found in other parts; among these is the definition the student aid report, or "SAR." Because of changes made by the Higher Education Amendments of 1992, the definition of that term will be amplified in the future to explain more fully the consequences of loss of eligibility or emergency action on the awarding and delivery of Pell Grant funds.

Section 668.81—Scope and Special Definitions

Comments: One commenter asked whether the Secretary had eliminated paragraphs (c)(3), (d), (e), and (f) of this section. These paragraphs provided that the procedures contained in Subpart G do not apply to decisions by the Secretary to refuse initially to certify an institution for participation in the title IV, HEA programs, to decisions to provide title IV, HEA program funds to an institution by reimbursement, and to administrative actions to enforce various anti-discrimination laws. Paragraph (f) contains definitions of terms used in subpart G. The same commenter believed that the subpart G procedures should be available for an institution whose funding method was changed from advance funding to reimbursement funding.

Discussion: The omission of paragraphs (d), (e), and (f) from the proposed rules as published were to be made to those paragraphs, which remain in effect. On the other hand, the commenter is correct that paragraph (c) was revised to eliminate former paragraph (c)(3) and to modify former paragraphs (c)(1) and (2).

The revisions to 34 CFR 668.81(c) do more than merely combine in paragraph (c)(1) the previous references to eligibility determinations and in paragraph (c)(2) the previous reference to initial certification determinations. Both parts of revised paragraph (c) contain a number of significant changes. New paragraph (c) reflects the increased focus of ED's eligibility and certification review, and respective appeal procedures, on the qualifications that must be shown by the institution as a whole, and by each affected *location* (such as a branch), for the institution or that location to participate in the title IV, HEA programs.

In both the eligibility review process described in part 600 and the certification process described in subpart B of part 668, ED scrutinizes an initial applicant as it is constituted at the time of application; 34 CFR 668.81(c) consistently has barred an institution initially applying for eligibility and certification or one of its parts from using the formal administrative appeal procedure under subpart G to challenge an ED determination that the institution does not meet factors of financial responsibility or standards of administrative capability under subpart B of part 668, or that the institution or a part of that institution does not quality as an eligible institution or location under part 600 or as an eligible program under part 668.

The revisions to part 600 made on August 7, 1990, establishing the appeal procedures regarding a determination that an institution as a whole no longer meets eligibility standards, gave the institution the same appeal rights with regard to a determination that a location or program that was previously included within ED's designation of eligibility no longer meets eligibility standards. No comparable provision was needed in Subpart G of part 668, because a determination that the institution lacks the administrative or financial capacity to administer properly the title IV, HEA programs at a location previously included within the scope of the institution's certification is, with respect to the institution itself, not a termination, but only a limitation of its ability to participate, for which appeal procedures already exist. 34 CFR 668.86.

When an institution adds a location, it must submit an application to ED demonstrating that the location meets the eligibility standards in part 600 if the new location is to be included within the designation of eligibility for the institution. 34 CFR 600.10(b)(3). At that time, ED may require the institution to demonstrate that it has the administrative and financial capability needed to manage properly the title IV, HEA programs at that additional location. The August 7, 1990 revision to paragraph (c)(2) was significant in that the regulation as revised provides that the institution receives no administrative appeal from ED under subpart G if ED decides that the institution lacks the resources needed to manage title IV, HEA program funds for that new location and, for that reason, refuses to extend the certification previously given to the institution to include that location. If, on the other hand, ED determines that the institution lacks the resources to manage title IV, HEA program administration at a location that previously was included within ED's certification of that institution, the institution may appeal that limitation action under existing appeal procedures in Subpart G.

The manner in which ED provides funding to an institution consistently has been viewed by the Secretary as a matter completely distinct from the institution's eligibility to participate in the title IV, HEA programs. ED never has regarded the change from advance funding to reimbursement funding as a limitation on eligibility that requires or warrants a formal administrative hearing. Unlike a limitation action, which bars reimbursement for awards of title IV, HEA program aid made by an eligible institution in violation of the terms of the limitation, a change in funding method has no effect on the legal right of the institution to obligate title IV, HEA program funds and receive full reimbursement from ED. ED's authority to pay title IV, HEA program funds by reimbursement is expressly recognized in the statute, 20 U.S.C. 1226a-1, and has been fully supported by the case law. See, *e.g., Bowling Green Jr. College* v. *U.S. Department of Education*, 687 F. Supp. 293 (W.D. Ky. 1988).

When ED proposes to change the funding method for an institution from advance to reimbursement, ED regularly gives the institution an informal opportunity to present objections to the change in funding and have the objections

considered. Based on ED's experience with the informal procedure, the Secretary has determined that there is no need to formalize the opportunity by including it in the procedures addressed in these parts of the regulations that govern eligibility matters.

Changes: Changes are made to clarify current law; §668.81(c)(2) is revised by the addition of new paragraph (c)(2)(ii) to clarify that ED's determination of whether to include a new location within the scope of participation of a previously-certified institution is not subject to formal administrative appeal by the institution under subpart G. Paragraph (a) of §668.81 is also revised to include technical changes to conform to the changes in paragraph (c) and the addition of termination procedures under part 600. Thus, the procedures established under subpart G of part 668 apply by their own force to adverse action regarding the participation of an institution that meets the requirements of part 600 and has been certified to participate; ED follows those subpart G procedures for administrative actions to limit or terminate the eligibility of an institution conducted under authority of part 600.

Section 668.83—Emergency Action

Comments: One commenter believed that the use of emergency action in instances in which an institution was thought no longer to be an eligible institution because of a loss of accreditation or State licensure would result in a summary revocation of eligibility. The commenter opined that ED's use of emergency action in cases of loss of license or accreditation would contradict its announced intention to adopt, in §600.41, the interpretation of the Court of Appeals in *Continental Training Services v. Cavazos*, 893 F.2d 877 (7th Cir. 1990), that the procedural protections found in section 487(c) of the HEA applied to revocations of eligibility based on loss of license or accreditation. 20 U.S.C. 1094(c). The commenter believed that by adopting such an interpretation ED would provide the institution no predeprivation process at all, in derogation of the institution's rights under the Fifth Amendment.

Discussion: An emergency action is, by its very terms, a temporary deprivation of the benefits of eligibility; no permanent deprivation of eligibility takes place under ED regulations before the institution has an opportunity to dispute the proposed permanent deprivation in a formal administrative proceeding. Even the temporary deprivation, as will be discussed shortly, is accompanied by a prompt opportunity for an informal hearing to dispute that action. Because Congress plainly and expressly authorized this temporary deprivation of eligibility without requiring an opportunity for a formal administrative hearing, the argument that ED violates an institution's procedural due process rights under other provisions of the statute or under the Constitution by taking emergency action has no merit. Moreover, for the reasons explained here, a revocation (termination) action under §600.41, even when preceded by an emergency action, is not a summary proceeding, and does not violate the institution's right under section 487(c)(1)(F) of the HEA, as redesignated by section 49(d)(2) of Pub. L. 102-325, to a hearing prior to termination.

In §600.41, ED guarantees an institution an opportunity for a formal administrative proceeding conducted in accordance with subpart G of part 668. In that proceeding, the institution may challenge a termination of eligibility based on loss of accreditation or license. This is clearly a change in ED's longstanding interpretation of section 487 of the HEA; it was made to adopt the interpretation of that section of the HEA statute reached by the 1990 *Continental* court ruling. Subpart G provides for an opportunity for a full administrative proceeding to contest a proposed termination action, and contains no provision for summary termination proceedings.

Use of emergency action in conjunction with a termination or revocation of eligibility under §600.41 does not make the revocation proceeding a summary proceeding. As another commenter observed, an emergency action is an administrative version of a temporary restraining order (TRO). An emergency action, like a TRO or preliminary injunction, is a temporary remedy; a court that issues a TRO or preliminary injunction still conducts a full trial on the merits in the case, and similarly, ED makes available a full administrative proceeding to dispute a proposed termination to an institution against which it has taken emergency action. The use of emergency action in connection with a termination case does not make the termination proceeding a summary proceeding any more than the issuance of a preliminary injunction would reduce the subsequent trial to a summary proceeding.

Changes: No change has been made.

Comments: A commenter stated that the opportunity for a show-cause proceeding for emergency actions when licensure or accreditation is lost that is provided under this section is meaningless because, the commenter believed, the Secretary intends to continue any emergency action commenced in such instances no matter what the institution demonstrated in the course of the show-cause proceeding.

Discussion: The Secretary expects to act promptly through emergency action in reaction to a loss of licensure or accreditation for an institution, while at the same time commencing a termination action on the basis of that loss. The mere fact that a loss of licensure or accreditation presents ED with a very narrow factual question does not make a show-cause proceeding provided in §668.83(e) after an emergency action has been taken a meaningless exercise. For example, it is possible that the Department might begin a termination and issue an emergency action on the basis of an erroneous report that an institution had lost its license or accreditation. The institution immediately can correct such a mistake through the show-cause proceeding. The proceeding gives the institution an effective means of correcting the kind of simple factual misunderstanding that ED has the authority to correct.

The Secretary recognizes that an institution that loses its license or accreditation may face imminent and serious economic loss as a result of the ensuing loss of title IV, HEA program eligibility, even if the latter loss is temporary; however, the possibility of economic loss should not cause the Secretary to defer action until the completion or expiration of the appeal period. The Secretary must consider the legal consequences of that loss under the statutory scheme, as well as the statutory responsibility to prevent funds being received by an institution that may not lawfully receive them. Section 487(c)(1)(G), as redesignated by section 490(d)(2) of Pub. L. 102-325, 20 U.S.C. 1094(c)(1)(G), directs the Secretary to consider whether the likelihood of loss from misuse of Federal funds outweighs the value to the institution of deferring action until completion of formal termination proceedings. That balancing test, in the case of a loss of license or accreditation, in most cases will dictate that the Secretary take emergency action against an institution. The unlicensed or

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unaccredited institution does not qualify to continue receiving student assistance funds (with the limited exceptions in §668.25), and it has no legitimate basis for seeking to delay ED's recognition of its loss of authorization and for the resulting consequences to be put in place.

Changes: No change has been made.

Comment: One commenter objected that by making the show-cause proceeding under §668.83 available only after the emergency action is taken, the regulation violated the institution's due process rights and rendered the appeal opportunity meaningless.

Discussion: The statute plainly does not require the Secretary to provide the institution an opportunity to be heard prior to placing an emergency action in effect. To the contrary, the statute directs that the emergency action takes effect on the date that the notice of emergency action is mailed to the institution. The statute does not provide that the emergency action will be stayed pending a show cause proceeding, and such a result would be inconsistent with the goal of emergency action as stated in the statute itself. The Secretary noted that other parts of section 487(c), unlike section 487(c)(1)(G), expressly mandate an opportunity for a prior hearing for other enforcement actions. In the immediately preceding and succeeding provisions of section 487(c)(1), for example, Congress authorizes the Secretary to limit, suspend, or terminate eligibility and fine an institution, 20 U.S.C. 1094 (c)(1)(F) and (c)(2), or to take similar action against a student aid contractor, 20 U.S.C. 1094(c)(1)(H), as also redesignated by section 490(d)(2) of Pub. L. 102-325, only "after reasonable notice and an opportunity for a hearing." Not only is the text of the statute clear that Congress intended ED to provide the institution an opportunity to show cause *after* the commencement of the emergency action, but the background of its enactment makes clear that Congress understood and intended to approve that practice, followed by ED for some fifteen years. 45 CFR 177.76(c), 40 FR 7598, February 20, 1975. The enactment of section 487(c)(i)(E) after the decision in *Ross University School of Medicine* v. *Cavazos*, 716 F. Supp. 638 (D.D.C. 1989), adopting, almost verbatim, the language of the same regulations viewed by the court as contrary to congressional intent in the prior decade, shows that Congress approved, and intended ED to continue, its practice of providing a show-cause hearing only *after* an emergency action has been taken.

Congress' decision in section 487(c)(1)(G) to approve ED's practice of affording an opportunity to be heard after, rather than before, the emergency action takes effect not only is consistent with legislative intent as inferred from the circumstances of its enactment, but comports with constitutional requirements regarding the extent to which a party has a right to a predeprivation hearing. The constitutional right to a hearing prior to deprivation of a protected interest is not an unqualified right; in limited circumstances the government properly may postpone the opportunity to be heard until after the initial deprivation. *FDIC* v. *Mallen*, 486 U.S. 230, 239 (1988); *Boddie* v. *Connecticut*, 401 U.S. 371, 379 (1971). The regulatory assurance of an opportunity for a show-cause meeting, upon request, promptly after the emergency action takes effect, with an official authorized to grant relief from the action, falls well within the time limits found acceptable in the case law.

Changes: No change has been made.

Comment: Several commenters suggested that ED should authorize guarantee agencies to take emergency action of the kind provided for in this section.

Discussion: The same statutory amendments that codified ED's right to take emergency action also revised corresponding provisions in section 428(b)(1)(T) and (U) of the HEA regarding enforcement actions by guarantee agencies to include recognition of the agencies' right to take emergency action. See 20 U.S.C. 1078(b)(1)(T),(U), as amended by section 2006(b) of P.L. 101-239. As discussed earlier, these statutory changes, which adopted almost verbatim ED regulations for emergency action, represent congressional affirmation of ED's practice during the past decade of taking emergency action under regulatory authority. See 45 CFR 177.76(c), adopted February 20, 1975. Some guarantee agencies similarly have adopted emergency action in their programs as an enforcement measure during that period.

The Secretary fully agrees with the commenters that guarantee agencies should be able to adopt and use emergency action procedures. However, the Secretary does not authorize guarantee agencies to take emergency action; agencies derive that right, like the right to take other adverse action, not from either the HEA or ED regulations, but from their own charters or authorizing statutes or resolutions. Guarantors therefore have no need for regulatory authorization from ED to continue or to commence the use of emergency action they otherwise are empowered to take. Similarly, to the extent that section 428(b)(1)(T) and (U) measures the propriety of guarantor emergency action procedures against Federal procedures, the Secretary regards the congressional affirmation of Federal emergency action authority (exercised previously solely under ED regulatory power) to represent an affirmation of the propriety of comparable guarantor emergency actions taken prior to these statutory amendments. 20 U.S.C. 1078(b)(1)(T),(U).

Changes: No changes have been made.

Comment: One commenter believed that the regulations should provide the institution with an opportunity for an immediate show-cause meeting and decision from the show-cause official.

Discussion: The Secretary has exercised the emergency action authority in a flexible manner to permit an institution to seek and obtain a show-cause meeting as soon as the institution was prepared to present its case, which it could do either in writing or in person. In practice, institutions usually have not requested that meeting immediately upon receipt of the notice, but have taken several days, or even longer, to prepare their responses. If an institution were to request an immediate meeting, ED cannot guarantee that it will always have a show-cause official available to conduct a show-cause meeting on the very day requested by the institution; nevertheless, ED treats the need for a prompt meeting as deserving high priority. Although ED does not consider it to be feasible in every case to commit to meet on the very date requested by the institution, ED has made, and intends to continue to make, every reasonable effort to accommodate a request for a show-cause meeting on the date the institution wishes to make its in-person presentation and to issue a written decision as soon after the meeting as possible. The Secretary intends to have a decision issued by the show-cause official ordinarily within ten days of the close of the meeting or receipt of a written presentation.

Changes: The regulations are revised to include a provisions that the show-cause proceeding is available, upon request by the institution, as soon as practicable, and that a decision will be issued promptly after completion of the meeting or receipt of the institution's written presentation.

Comment: The same commenter objected that the regulations appear to provide improperly that the same official who initiated the emergency action would conduct the show-cause proceeding. The commenter believed that an independent official or administrative law judge (ALJ) should conduct the show-cause meeting.

Discussion: The Secretary agrees that the same official who initiates an emergency action should not serve as the show-cause official for that action; in practice, ED arranges for an official other than the official initiating the emergency action to conduct the show-cause meeting. The officials who have conducted show-cause meetings for institutions typically have been officials who have authority over enforcement actions, but who have had no prior involvement in the decision to commence emergency action with regard to that institution. Neither the statute nor constitutional due process considerations dictate that the show-cause proceeding be conducted by officials completely separated from the administration of the title IV, HEA programs. The statute states that the Secretary is to provide the show cause opportunity, not an official independent of his authority. Due process is satisfied if the individual conducting the meeting has the authority to grant the relief requested and has not been involved in the prior decisions regarding the adverse action at issue against the institution. See *Morrissey* v. *Brewer*, 408 U.S. 471, 486 (1972).

Changes: The regulations are revised to clarify that the official who conducts the show-cause proceeding is not the same individual who initiated the emergency action, that the show-cause official is an official who has authority to modify or withdraw the emergency action, and that the show-cause official issues a written decision promptly after the institution has completed presenting the material it wishes to have considered in support of its petition.

Comment: A commenter objected that the regulations do not guarantee the institution a right to present evidence and argument at a show-cause meeting, do not allocate the burden of proof between the institution and ED, do not articulate the standards an institution must meet to show that an emergency action was unwarranted, and do not prescribe the standard of proof that applies in determining whether the emergency action should be withdrawn.

Discussion: The emergency action itself is a preliminary and provisional remedy, and the statute plainly does not require that the show-cause meeting be conducted as a formal administrative hearing. There is therefore no need to follow requirements that attend formal proceedings. The only thing specified by the statute is that the school bears the ultimate burden of proof—that is, of showing cause why the emergency action is unwarranted. In all other respects, it is up to the show-cause official to set these rules on a case-by-case basis. ED has, in practice, permitted an institution to include in its show-cause presentation whatever evidence and argument the institution wished to produce, subject only to the relative informality and brevity with which ED conducts the proceeding, as connoted by the term "show-cause meeting." Consistent with that relative informality, these meetings can be, but are not always, transcribed, and the show-cause official may require individuals who want to present oral statements to do so under oath. In the notice of emergency action sent to an institution, the initiating official describes the grounds for the action in a manner designed to provide, at the very least, sufficient detail to allow the institution to respond meaningfully to the charges. The standards an institution must meet are those described in the notice and taken from the statute: that the acts or omissions described in the notice on which emergency action was premised did not occur, or that the particular restrictions imposed by emergency action are not necessary to prevent misuse of title IV, HEA program funds.

Changes: The regulations have been revised to state that the institution has the right at a show-cause meeting to present evidence and argument to support its challenge to the emergency action; this is, however, subject to the authority of the show-cause official to restrict or exclude material he or she considers irrelevant. The regulations have been revised further to provide particular examples of conduct that, in addition to obvious examples of misconduct (such as theft, embezzlement, and false determination of student eligibility), will be considered to cause misuse and loss of title IV, HEA program funds, and to provide that the institution bears the burden of persuading the show-cause official that the violations of HEA requirements and expected loss of funds on which the action was premised did not occur, are no longer occurring, and will not recur, or can be prevented reliably by an alternative restriction or procedure.

Comment: One commenter urged that the use of emergency action in conjunction with termination for loss of licensure or accreditation would make it nearly impossible for an institution to complete teaching the courses in which students were then enrolled or to make responsible teachout arrangements, and to that extent the operation of emergency action under §668.83 conflicts with 34 CFR 668.25.

Discussion: In using emergency action in cases of loss of eligibility, the Secretary does not intend to thwart legitimate efforts by the institution to complete its educational responsibilities. On the other hand, ED repeatedly has found that institutions that lose their eligibility due to loss of license or accreditation and thereafter close make no effort to meet their closeout responsibilities to currently enrolled students, to former students to whom refunds are owed, or to ED and to the public, to which the institutions have a duty to account for the funds they already received. 34 CFR 668.25(a). Further, it should be noted that under many State laws, an institution may not operate lawfully without a license; in those States, an institution that loses its State license thus may not be authorized to complete its educational responsibilities.

ED's general practice under the current regulations has been to impose an emergency action initially but to agree, upon request, to modify the emergency action if an institution presents a credible proposal to prevent the misuse charged in the notice. The emergency action thereafter remains in place, but rather than operating as a temporary suspension or termination, the action is then more in the nature of a temporary limitation on the institution's eligibility. In the case of a loss of eligibility under part 600, for example, an emergency action might be modified upon a request to permit the institution to meet all its closeout obligations described in 34 CFR 668.25, subject, in particular cases, to the further condition that the institution first make adequate provision for a final audit, for record retention, and for

satisfying outstanding refund and other claims by students and by ED.

Moreover, in addition to close-out situations, there may be other instances in which ED could conclude that it is unnecessary to impose the emergency action in the full measure authorized in the statute, and that to do so might cause needless disruption to students. Upon a credible presentation by an institution that a lesser restriction suffices to prevent the misuse charged in the notice, ED may agree to modify an emergency action temporarily to limit, rather than to suspend, the eligibility of the institution.

For these reasons, the Secretary agrees that the current regulations should be modified to incorporate more flexibility into the scope of the emergency action as initiated. In cases that do not involve close-out situations, for example, emergency action could be used to impose an immediate limitation, such as a requirement that the institution engage a responsible third party to monitor and control the institution's access to title IV, HEA program funds. Rather than withdrawing completely the authority of the institution to disburse title IV, HEA program funds, the Secretary in such a case would use emergency action to require the institution to deposit all title IV, HEA program funds into an escrow account administered by an accounting firm or other professional, to be released only upon proof by the institution that each proposed student recipient qualifies for the aid, and, if title IV, HEA program funds are to be used to meet tuition expenses, that the institution already had provided the portion of the training for which the payment is being sought.

Similarly, in the case of a loss of eligibility under part 600, emergency action could be used to permit the institution only to make "closeout" disbursements for its students, subject, in particular cases, to the condition that the institution first make adequate provision for a final audit, for record retention, and for satisfying outstanding refund and other claims by students and by ED.

Changes: The Secretary is revising §668.83 to provide, in paragraph (a)(2), that ED, by emergency action, may either withdraw the authority of the institution to use or permit the obligation of title IV, HEA program funds, or withdraw the authority of the institution to use title IV, HEA program funds, except in accordance with a specified procedure.

Comment: One commenter objected that the regulations convert emergency action, a sanction intended for interim use, into one that is indefinite in duration. The commenter stated that in a case in which a termination action results in a decision favorable to the institution and the case then is appealed to the Secretary by ED's Student Financial Assistance Programs, the regulations permit the emergency action to remain in effect throughout the appeal. The commenter viewed the continuance of emergency action as being unjustified, because the facts on which the emergency action was premised in such cases would have been decided already at the administrative hearing in a manner contrary to that asserted by the official who initiated the emergency action. The commenter believed that this unfairly and unduly prolongs the emergency action in a manner contrary to the statutory requirements.

Discussion: The comment poses two separate concerns: (1) the consistency with the governing statute of a rule under which an emergency action may persist through appeal proceedings and (2) the duration of an emergency action. The statute is clear that the authority to initiate and continue an emergency action is distinct from, although designed to attend to the outcome of, limitation, suspension, or termination proceedings. In taking emergency action, the statute directs the Secretary to consider whether the likelihood of loss outweighs the importance of the procedures prescribed for terminating eligibility. 20 U.S.C. 1094(c)(1)(G)(iii).

This language refers to balancing the need for immediate action against the desirability of deferring action until the completion of those procedures. Section 487 of the HEA and ED regulations have always regarded the crucial and effective component or step in those administrative proceedings to be the decision of the Secretary, not that of the hearing official; the regulations consistently have characterized the decision of the hearing official as the initial decision, which then becomes the decision of the Secretary *only if neither party lodges a timely appeal.* 34 CFR 668.90(c)(1). Until that *initial* decision becomes the Secretary's decision, neither party is bound by the findings of fact of the hearing official. Therefore, it is not inconsistent with the statute that vests termination decision-making power in the Secretary for the Secretary to permit the emergency action to continue until his own review of the evidence regarding the underlying facts, whether or not the hearing official credited that evidence.

On the other hand, the Secretary believes that different kinds of changed circumstances could justify revisiting the emergency action prior to the end of the formal termination proceedings. For example, the immediate problems that gave rise to the need for emergency action may be resolved during that period to ED's satisfaction. On the other hand, the Secretary also believes that if the institution were permitted repeated opportunities to challenge the emergency action, the institution would have much less incentive to present during the show-cause proceeding either a well-considered rebuttal or a responsible proposal to cure the problem, and ED officials would be required to waste considerable amounts of their time sifting through frequent, unsubstantiated demands to reopen initial show-cause determinations.

After an emergency action has been in effect for a specified period of time, it can be useful to provide a single opportunity for an institution to demonstrate that it has cured the problem that caused the imposition of the emergency action. To provide this opportunity accommodates the need to relieve a sanction that is no longer warranted, the need to retain a credible incentive for serious initial presentations and negotiations, and the need to avoid wasted administrative reviews. For several reasons, the Secretary considers six months to be long enough after imposition of an emergency action to meet these competing considerations. This length of time, one-half of an award year, should provide a sufficiently long period for the institution to demonstrate that it actually has put in place correct procedures for properly calculating student need and qualification for aid; for tracking attendance, withdrawals, and other matters that require adjustment of student awards; and for honoring its refund obligations.

Changes: Section 668.83 is revised to provide that if an emergency action remains in effect for six months, an institution may present and have considered written evidence and argument demonstrating that because of actions

occurring after the show-cause meeting the imposed emergency action is no longer warranted or should be modified.

June 8, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations. These regulations are needed to implement changes required by the Omnibus Budget Reconciliation Act of 1989, the Department of Defense Authorization Act, 1987, and the Compact of Free Association. These regulations also make necessary technical modifications and enhance program integrity in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments with the exception of the amendments to §§668.7(a)(1)(ii), 668.22, 668.7(a)(6), 668.7(a)(9) and 668.34. The amendments to §668.7(a)(1)(ii) are effective as of December 1, 1987. The amendments to §§668.7(a)(6), 668.7(a)(9) and 668.34 take effect on July 1, 1994. The amendments to §668.22 take effect on September 30, 1993. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan (GSL)), PLUS, Supplemental Loans for Students (SLS), Consolidation, State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as the "campus-based programs."

On December 23, 1991 the Secretary published a notice of proposed rulemaking (NPRM) for part 668 in the **Federal Register** (56 FR 66496). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Amendment to General Definitions contained in §668.2 to clarify the definition of several of the Title IV, HEA programs (page 66496);

Addition to the student eligibility provisions to provide for the eligibility of students enrolled in a teacher certification program (page 66496);

Clarification of the current status of Palau as the only Trust Territory of the Pacific Islands (page 66496);

Addition of the Perkins Loan Program to provisions relating to students who owe refunds due to an overpayment (pages 66496–66497);

Addition of the requirement that a student certify that he or she has not borrowed in excess of Title IV loan limits in order to be eligible for additional Title IV assistance (pages 66496–66497);

Clarification that defaulted loans that are fully repaid or rehabilitated are no longer considered in default for purposes of student eligibility (page 66497);

Clarification that a student who has defaulted on a Title IV loan that is discharged in bankruptcy is eligible for aid under the Title IV grant programs but ineligible for Title IV loan assistance unless the student makes satisfactory arrangements to repay the loan (56 FR 66497);

Modification of the circumstances under which a program of study by correspondence may qualify as an eligible program (56 FR 66498);

Addition of the requirement that an institution submit, upon request, an audited and certified financial statement (56 FR 66498);

Modification of the definition of institutional refund to exclude any unpaid balance owed to the institution by a student when the institution determines the amount the institution may retain for institutional charges (56 FR 66498–66500);

Addition of a new condition under which an institution may waive the requirement that a student file a Statement of Registration Status (56 FR 66500); and

Amendment to the Statement of Registration Status to clarify the current eligibility status of the residents of the Republic of Palau, the Federated States of Micronesia, and the Marshall Islands (56 FR 66500).

The Higher Education Amendments of 1992 (Pub. L. 102-325) (the Amendments) make changes that affect the following provisions of these final regulations:

- The December 23, 1991 NPRM proposed technical changes to §668.2 to clarify the definitions of several of the Title IV, HEA programs. Proposed conforming changes were made throughout Part 668. The Amendments make changes to the names of many of these Title IV programs. Although these final regulations contain references to the new Federal Direct Loan Demonstration Program in §§668(a)(1)(ii) and 668.7(h), the term "Federal Direct Loan Demonstration Program" is not defined in these final regulations. To provide a greater degree of consistency in the changes to the Student Assistance General Provisions resulting from the Amendments, the definition of this term and the program name changes will be incorporated in regulations at a later date.

- The December 23, 1991 NPRM proposed to amend §668.7(a)(1)(ii) to state that a student who is enrolled or accepted for enrollment at an eligible institution in a teacher certification program that is required for employment is eligible for assistance under the GSL programs (56 FR 66496). The Amendments revised section 484(b)(4) of the HEA to extend the eligibility for assistance to the Work-Study,

Perkins Loan and the newly created Federal Direct Loan Demonstration programs. The Amendments state that this change is effective on and after December 1, 1987. The changes necessary to incorporate this provision into the regulations have been made to §668.7(a)(1)(ii).

• The December 23, 1991 NPRM proposed a change to §668.7(a)(9) to require a student to certify that he or she has not borrowed in excess of Title IV loan limits in order to be eligible to receive additional Title IV, HEA program assistance (56 FR 66496–66497). The Amendments state that no student shall be eligible to receive Title IV assistance if the eligible institution determines that the student fraudulently borrowed in violation of Title IV loan limits. The Amendments further state that if the institution the student attends determines that the student inadvertently borrowed in excess of the Title IV loan limits, the institution must allow the student to repay any amount borrowed in excess of the limits prior to certifying the student's eligibility for further Title IV assistance. A new §668.7(h), which states that an otherwise eligible student who has inadvertently borrowed in excess of Title IV loan limits is eligible to receive additional Title IV assistance upon full repayment of the excess amount, has been added to incorporate this change.

• In the preamble to the NPRM the Secretary requested comments on whether §668.7(e) should be revised to establish the specific conditions under which a student who has previously defaulted on a Title IV loan may be eligible for additional assistance (56 FR 66497–66498). The Secretary suggested an amendment to §668.7(e) in the preamble to the NPRM and stated that he would consider including this option in these final regulations. Alternatively, the Secretary stated that he would consider including an option proposed as a result of public comment in a subsequent NPRM. However, the Amendments contain a provision that would require guaranty agencies to establish a program that allows a borrower with defaulted Stafford, SLS or PLUS loans to re-establish his or her eligibility for additional Title IV assistance upon the borrower's making six consecutive monthly payments. In addition, the provision states that a guaranty agency shall not demand from a borrower as a monthly payment an amount that is more than is reasonable and affordable based upon the borrower's total financial circumstances. The enactment of this provision establishes the specific conditions under which a student who has previously defaulted on a Stafford, SLS, or PLUS loan may be eligible for additional Title IV assistance; an NPRM must be developed, using negotiated rulemaking, to implement the new standard. The Secretary will take any applicable comments received in response to the December 23, 1991 NPRM into consideration in the drafting of the proposed regulations to address satisfactory repayment arrangements. A detailed discussion of the comments received in response to the December 23, 1991 NPRM is found in the **Analysis of Comments and Changes**.

• The December 23, 1991 NPRM proposed a change to §668.8 to modify the circumstances under which a program of study by correspondence qualifies as an eligible program at a vocational school (56 FR 66498). The Amendments include changes to the definition of a correspondence program. Additionally, the Amendments repealed the definition of "vocational school" as of July 23, 1992. Programs that were eligible under the definition of vocational school now must become eligible under a new institutional definition. This definition will be developed through the negotiated rulemaking process. Therefore, the proposed change to §668.8 is not included in these final regulations.

• The December 23, 1991 NPRM proposed a change to §668.13 to require that an institution submit, upon request, an audited and certified financial statement (56 FR 66498). Under this proposal, the Secretary would require an audited statement each time that an institution seeks initial or continued certification to participate in a Title VI, HEA program. The amendments require the Secretary to prescribe regulations, as may be necessary, to require institutions to submit an audited and certified financial statement to the Secretary on at least an annual basis. The change resulting from the Amendments does not supersede the Secretary's ability to implement the audited financial statement requirement resulting from the December 23, 1991 NPRM. Further the Secretary believes it is important to have the final regulations resulting from the December 23, 1991 NPRM in effect until final regulations resulting from the audited financial statement requirement in the Amendments become effective. Regulations implementing the requirement contained in the Amendments will be drafted through the negotiated rulemaking process.

• The Amendments require each institution participating in any Title IV, HEA program to have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received Title IV assistance (including PLUS loans received on the student's behalf) if the student does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance was provided. As this change does not directly affect the change proposed in the December 23, 1991 NPRM to §668.22—a modification of the definition of institutional refund to exclude any unpaid balance owed to the institution by a student when the institution determines the amount the institution may retain for institutional charges (56 FR 66498–66500)—no change has been made to §668.22 in this final regulation. Regulations implementing the refund requirement will be drafted through the negotiated rulemaking process.

• The December 23, 1991 NPRM proposed to amend §668.33(b) to provide an additional condition under which an institution may waive the requirement that a student file a Statement of Registration Status (56 FR 66500). Although the Amendments did make changes to the Statement of Registration Status requirements, these changes do not directly affect the change proposed in the December 23, 1991, NPRM. No change has been made to §668.33(b) in these final regulations as a result of the Amendments. Regulations implementing the changes to the Statement of Registration Status requirements contained in the Amendments will be drafted through the negotiated rulemaking process.

In addition to the changes resulting from the Amendments, changes have been made to the following provisions of these final regulations:

On March 13, 1992, the Secretary published as final regulations changes to §668.7(a)(4)(iv) of the Student Assistance General Provisions regulations (57 FR 9004). The final regulations incorporated the changes to §668.7(a)(4)(iv) as proposed in the December 23, 1991 NPRM (56 FR 66496) as well as changes to this section required by Public Law 100-369. Public Law 100-369 provides that residents (instead

of citizens) of the Freely Associated States (the Federated States of Micronesia and the Marshall Islands) are eligible to receive assistance under the Pell Grant, Supplemental Educational Opportunity Grant, and College Work-Study Programs. Corresponding changes have been made in this final regulation to the Statement of Educational Purpose and Registration Status. A change also has been made to §668.7(a)(4)(iii) to clarify the eligibility status of residents of Palau.

These regulations include the addition of paragraphs §668.7(a)(12) and §668.7(g) in accordance with the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101-647). The Act provides that an individual whose property is subject to a judgment lien for a debt to the United States generally is not eligible to receive any grant or loan made, insured, guaranteed, or financed by the United States, or to receive funds directly from the Government in any program (except funds to which the debtor is entitled as a beneficiary), until the judgment is paid in full or the individual has made satisfactory arrangements to pay the judgment.

These regulations amend §668.14, Standards of administrative capability, to clarify the requirements of §668.14(d)(2). Currently, §668.14(d)(2) states that for the Secretary to consider an institution to be administratively capable, the institution must divide the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. The Secretary is amending this section to clarify that an institution must divide the functions of authorizing payments and disbursing or delivering funds as, in the case of Stafford and SLS loans, an institution delivers but does not disburse the funds.

The Secretary is amending §668.33 to provide that the requirement that a student file a Statement of Registration Status does not apply to students who are 26 years old or older and have been discharged from active duty in the armed forces other than the reserves and National Guard. The December 23, 1991 NPRM proposed to revise §668.33 to permit an institution to waive the requirement for a student to file a Statement of Registration Status if the student (a) failed to register with the Selective Service when required and is now 26 years old or older, and (b) provided to the institution an advisory opinion that he obtained from the Selective Service System that demonstrates that he did not knowingly and willfully fail to register. In response, commenters stated that they did not believe that students beyond the registration age should be required to obtain an advisory opinion from the Selective Service to establish aid eligibility. In addition, on February 21, 1992, the Secretary published a notice in the **Federal Register** requesting public comments on statutes and regulations that substantially impede economic growth, are no longer needed, or otherwise impose unnecessary costs or burdens. In response to this notice, one commenter suggested that students 26 years of age and older not be required to file a Statement of Registration Status, as the students are no longer required to be registered with the Selective Service. Because it is a statutory requirement that a student who has failed to register with the Selective Service is eligible for Title IV assistance only if he can demonstrate that he did not knowingly and willfully fail to register (The Military Selective Service Act (50 U.S.C App. 462)), the Secretary may not exempt all students who are 26 years old or older and who failed to register from the requirement that they sign a Statement of Registration Status. However, to reduce administrative burden, the Secretary has decided that students 26 years old or older who have received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard should not be required to file a Statement of Registration Status or obtain an advisory opinion. These students have clearly demonstrated by their voluntary enlistment for active duty that they did not intend to avoid military service. The requirement that a student obtain an advisory opinion from the Selective Service that demonstrates that he did not knowingly and willfully fail to register is still applicable for all other students who are 26 years old or older who failed to register when required. A detailed discussion of the comments is found in the **Analysis of Comments and Changes**.

These regulations also contain technical changes in §§668.7, 668.8, 668.12, 668.20, 668.22, 668.23, 668.32, 668.83, 668.94, and 668.95 that, with the exception of a technical change to §668.7(a)(1)(ii)(A), are the result of changes made in response to comments regarding the use of the term "GSL programs" (see **Analysis of Comments and Changes**).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 81 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Section 668.2 General Definitions

Comments: Several commenters supported the proposed changes to the general definitions. One commenter recommended clarifying the definitions of the PLUS Program, Stafford Loan Program and the supplemental Loans for Students Program by adding the phrase, "to help pay for the costs of the student's postsecondary education" at the end of the definitions.

Discussion: These definitions were amended to make them consistent with the definitions proposed in 34 CFR 682.100 of the November 20, 1990 Notice of Proposed Rulemaking for the Guaranteed Student Loan programs. The Secretary believes further clarification is unnecessary.

Changes: None.

Section 668.7 Eligible Student

Comments: One commenter contended that the use of the term "GSL programs" (which refers to the Stafford Loan, PLUS, SLS and Consolidation Programs) in §668.7(a)(1)(ii), incorrectly indicates that a student must meet the requirements of this section in order to participate in the Consolidation Program. Additionally, a few commenters noted what they thought to be similarly confusing uses of the term "GSL programs" in other sections of the NPRM.

Discussion: The Secretary agrees that the proposed language may create confusion.

Changes: The proposed changes to §§668.7, 668.8, 668.12, 668.20, 668.22, 668.23, 668.32, 668.83, 668.94 and 668.95 adding the term "GSL programs" have been removed. The term "GSL" has been changed to "Stafford Loan" in the appropriate sections of §§668.7, 668.8, 668.12, 668.20, 668.22, 668.23, and 668.32. The term "Guaranteed Student Loan or PLUS" has been changed to the term "Stafford Loan, PLUS or SLS" in the appropriate sections of §§668.94 and 668.95. The words "any of the Guaranteed Student Loan Programs" have been changed to "the Stafford Loan, PLUS or SLS programs" in §668.83(d)(3). The term "Guaranteed Student Loan and PLUS" has been changed to the term "Stafford Loan, PLUS and SLS" in §668.94(c)(2).

Comments: Several commenters supported the proposed change to §668.7(a)(1)(ii) that enables a student who is enrolled or accepted for enrollment at an eligible institution in a teacher certification program that is required for employment to be eligible for assistance under the Stafford Loan, PLUS, or SLS programs.

Discussion: This change was made in accordance with amended section 484(b) of the HEA. The Secretary agrees with the commenters that this is a desirable change.

Changes: Section 484(b)(1)(A) of the Amendments extends the eligibility for assistance to the Work-Study, Perkins Loan and the newly created Federal Direct Loan Demonstration programs. The Amendments state that this change is effective on and after December 1, 1987. The changes necessary to implement this provision have been made to §668.7(a)(1)(ii).

Comments: Several commenters supported the change to §668.7(a)(6) that adds the requirement that a student does not owe, and certifies that he or she does not owe, a refund on a Perkins Loan due to an overpayment in order to be eligible to receive Title IV, HEA program assistance. A few commenters asked the Secretary to clarify whether a student whose overpayment has been removed from the student's account (*i.e.*, the student's account no longer indicates that these funds are due) because the funds have been returned to the program account by the institution, rather than the funds having been repaid by the student, is still liable for an overpayment for purposes of student eligibility. The commenters believed that students in this situation should be considered to owe funds to the institution and, therefore, not be liable for an overpayment of Title IV, HEA program funds. Two commenters recommended that the Secretary not require that changes be made to the certification statements until the next regularly scheduled reprinting of the applications.

Discussion: The Secretary wishes to clarify that when a student is liable for an overpayment of Title IV funds and the institution adjusts the student's account to remove the overpayment and restores the funds to the appropriate Title IV program account, the student is no longer liable for an overpayment of Title IV funds. Instead, in some cases, the student may owe funds to the institution. The Secretary agrees that requiring the reprinting and recollection of the statements for the current academic year would be unduly costly and burdensome for institutions and their students.

Changes: An institution should revise the statements to reflect the changes made by these regulations for the next scheduled printing of these statements. All institutions are required to collect the amended statements beginning with the 1993-94 award year. Unamended statements signed by students prior to the reprinting of the statements will be acceptable for the determination of student eligibility until July 1, 1993.

Comments: Several commenters supported the student eligibility requirement in §668.7(a)(9) that a student certify that he or she has not borrowed in excess of Title IV loan limits. Two commenters asserted that this requirement will make students more accountable, especially in cases where the student has borrowed Stafford or SLS loans that have been guaranteed by more than one guaranty agency. Several commenters felt that this requirement would cause confusion for students since most of them are unaware of the Title IV loan limits. Several commenters felt this would result in an additional burden for institutions since they will be required to assist the students in answering this question. Since institutions are already required to check this information as part of determining a student's eligibility, several commenters felt this requirement would be unnecessary. One commenter was concerned with the potential liability of an institution if it was held responsible for verifying the student's certification. One commenter believed the change would not enhance program integrity since the only method of verification of such information is at the institutional level. One commenter asserted that a student who has borrowed in excess of the loan limits would be required by the lender to repay the excess amount within 30 days. Failure to repay would trigger default which would then render the student ineligible for additional aid. The commenter did not see the added benefit of having the student sign the certification. Another commenter recommended that the certification be limited to a one-time collection when the student first enters the institution since the institution will track this information on its own for the remainder of the student's attendance. Several commenters noted that this information will be provided more reliably when the National Student Loan Data System is operational. A number of commenters recommended that the Secretary provide sufficient time for the changes to be made to the certification statements included on guaranty agency applications.

Discussion: The Secretary agrees with commenters that requiring a student to certify that he or she has not borrowed in excess of Title IV loan limits would make students more accountable. The Secretary believes that, as a part of a student borrower's obligation, the student should be aware of the amount he or she has borrowed and the loan limits. The Secretary views this as a preventive measure that will decrease the occurrence of default as a result of borrowing in excess of loan limits. Further, the Secretary does not believe a one-time collection of this certification would accomplish this goal. A student should be required to assess his or her loan situation each time he or she applies for Title IV assistance.

The Secretary does not believe it is unreasonable to expect institutions to provide clarification for students, upon request, of the loan limits. Pursuant to §668.14(a), an institution must designate a capable individual to be responsible for administering all of the Title IV, HEA programs in which it participates. Further, pursuant to §668.45(a), each institution is required to designate an employee or group of employees who must be available on a full-time basis to assist enrolled or prospective students in obtaining financial assistance and institutional information. Costs incurred by an institution as a result of compliance with this provision are

considered to be ordinary costs of doing business. The Secretary does not believe that implementing this new certification provision creates a new liability since, under §668.7(a)(9), the institution that the student attends is already required to determine that the student has not borrowed in excess of Title IV loan limits. As noted in the NPRM (56 FR 66497), this certification requirement is already included as part of the "Statement of Educational Purpose/Certification Statement on Refunds and Default" found on all Student Aid Reports. This regulatory change merely codifies current practice. In order to assist students in understanding and meeting the certification requirement, the Department intends to publish the loan limits in a readily available source. The Secretary recognizes that, once it is operational, the National Student Loan Data System will provide this information to students and institutions; however, in the interim the Secretary believes it is important to implement this requirement. The Secretary notes that, in general, the Student Assistance General Provisions requirements apply to institutions that participate in the Title IV, HEA programs and not to guaranty agencies; however, the Secretary recognizes that the requirement that a student certify that he or she has not borrowed in excess of Title IV loan limits, as determined by the institution he or she attends, affects the publication of guaranty agency applications.

Changes: Statements should be revised to reflect the changes made by these regulations for the next scheduled printing of these statements. All institutions are required to collect the amended statements beginning with the 1993-94 award year. Unamended statements signed by students prior to the reprinting of the statements will be acceptable for the determination of student eligibility until July 1, 1993.

Comments: Two commenters supported the clarification in §668.7(e) that a defaulted loan that has been fully repaid by the student no longer would be considered in default for purposes of student eligibility. One commenter felt it is important to provide a student who has defaulted on a loan a second opportunity to receive Title IV, HEA program funds to aid in the continuation of his or her education. Another commenter suggested that these provisions stipulate that the term "fully repay" includes payment of principal, capitalized interest, and other accrued interest. The commenter felt the holder of the defaulted loan should receive full compensation from the borrower who wished to regain Title IV privileges. One commenter recommended that a student who has fully repaid his or her loan not be allowed to receive another loan for a specified period of time to ensure that the student is sincere in pursuing his or her educational objective. One commenter asked whether a student who has fully repaid his or her loan not be allowed to receive another loan for a specified period of time to ensure that the student is sincere in pursuing his or her educational objective. One commenter asked whether a student who has repaid his or her defaulted loan is eligible to receive further Title IV, HEA assistance if he or she had received aid at an institution while he or she was in default. Three commenters recommended that the loan be removed from the institution's cohort default rate once the student has entered repayment or fully repaid the loan.

Discussion: The Secretary believes that full repayment of a defaulted loan sufficiently demonstrates the student's awareness of his or her obligation to repay a loan and his or her sincerity in pursuing his or her educational objective. The Secretary would like to clarify that in a situation where, in a single award year, a student defaults on a student loan, receives Title IV aid after he or she defaulted, and repays or makes satisfactory arrangements to repay the loan within the award year, the student regains eligibility for the entire award year. If, however, in a single award year, the student defaults on a student loan and subsequently receives Title IV aid during the same award year, but does not repay or make satisfactory arrangements to repay the defaulted loan until a subsequent award year, the student would be ineligible for the entire award year in which he or she was in default; the student would have to return all Title IV, HEA program funds received for the award year in which he or she was ineligible for Title IV aid in order to regain eligibility under the Title IV, HEA programs. The Secretary does not believe that it is necessary to define the term "fully repay." Section 435(m) of the HEA includes in the cohort default rate only loans for which the Secretary or a guaranty agency has paid insurance claims. However, the statute provides for the exclusion of any loan that has been rehabilitated; the statute does not provide for, nor does it give the Secretary the authority to exclude from the cohort default rate, loans that have entered repayment or loans that have been paid in full. Additionally, §668.7(e) of the December 23, 1991 NPRM inadvertently used the term "Stafford Loan" instead of the term "GSL programs loan" when referring to the defaulted loans for which the Secretary must determine that the student has made satisfactory arrangements to repay in order for the student to be eligible for further Title IV, aid. A GSL programs loan includes loans under the Stafford Loan, PLUS, SLS and Consolidation programs. The Secretary has corrected this in these final regulations.

Changes: Section 668.7(e)(1)(ii)(A) is amended by removing the term "Stafford Loan" and adding in its place the term "GSL programs loan."

Comments: One commenter opposed changing §668.7 to provide that a borrower who has defaulted on a Title IV, HEA loan is ineligible for future Title IV loans without taking into consideration whether the loan was discharged in bankruptcy. The commenter stated that the Title IV loan programs were intended to be available for any applicant, without regard to his or her credit record or creditworthiness, that the Secretary lacks authority to restrict access to loans for those with bad credit histories, and that if such authority existed, this rule would illogically bar only those with defaulted loans discharged in bankruptcy, but not other bad credit risks.

Discussion: The proposal at issue would change current regulations by treating all Title IV, HEA loan defaulters in the same way, rather than favoring those whose loans had been discharged in bankruptcy. Quite the opposite of excluding only those defaulters who had received discharges, the new rule would cause all those with bad credit histories with regard to Title IV, HEA loans in particular including those whose loans were discharged, to be treated in the same way. The Secretary does not intend lenders to disregard other kinds of loan delinquencies of which they are aware. On March 10, 1993, the Secretary published an NPRM that proposes regulations to implement OMB Circular A-129 that will require Title IV, HEA loan applicants to disclose delinquencies on other Federally financed loans (58 FR 13356).

The contention that the Title IV, HEA loan programs are intended to be available for any applicant without regard to the credit risk posed by that applicant is a serious misconception of the basic nature of the loan programs and

the kind of credit risk with which the programs have been designed to deal. The Secretary has always considered the Title IV, HEA student loan programs as intended to provide financing for those whom commercial lenders would regard as bad credit risks solely because of their insufficient or nonexistent credit histories and collateral. An insufficient credit history is quite different from an adverse credit history. The applicant for a Title IV loan must be willing to repay the requested loan, but default on a prior Title IV loan is clearly a strong indication that the applicant lacks the intention to repay a new Title IV loan. Prior defaulters accordingly have been restricted or barred from access to new loans under section 497 of the HEA, as enacted in 1976; under section 484 of the HEA, as enacted in 1980 and re-enacted, in expanded scope, in 1986; and under Department regulations in effect since 1979. See, e.g., 34 CFR 674.9(e); 45 CFR 177.201(a)(5), (b)(3)(1979), 45 CFR 190.76(a)(4), (g)(3) (1979) (discussing consideration, in particular, of defaulted loans discharged in bankruptcy). The statute similarly has barred or restricted access to grant and work-study assistance; that sanction naturally operates as a deterrent to loan default and an inducement to cure past defaults, as well as a judgment that the defaulter poses a credit risk for new loans. See 20 U.S.C. 1088f(e) (1977). The Secretary has for many years followed a policy of disqualifying applicants for new Title IV, HEA loans who previously have defaulted on Title IV, HEA loans. That policy not only rests on statutory directive, but also is consistent with the purposes of these programs.

Changes: None.

Comments: A commenter opposed adopting a change to §668.7(f), arguing that to change the rule would contravene the intent of the Title IV, HEA loan programs by restricting access to further education for those who need that training to escape from poverty, and who in some instances, have received a determination from a bankruptcy court that repayment of the defaulted student loan would pose an undue hardship for them. The commenter believed that in the statutory limits on loan discharge in the Bankruptcy Code, Congress prescribed the burdens borrowers must bear for past defaults; the commenter believed that this proposal would prolong that enforcement period.

Discussion: The proposed change to §668.7(f), like the statutory directive in section 484(a) it implements, has several purposes: to deter defaults by current borrowers, to protect public funds against future losses on new loans to past defaulters, and, as interpreted by the Secretary in regulations, to motivate past defaulters to renew their commitment to honor their loan obligations. As the commenter observed, the purpose of the programs is to help needy individuals gain training to escape poverty. However, the existing rule, which disqualifies only those defaulters who have not received a discharge in bankruptcy, does not distinguish on the basis of need: It protects discharged defaulters and disqualifies only those defaulters who have not received discharges in bankruptcy, without regard to the current financial situation or vocational needs of the individual debtors. This is neither a necessary nor a useful distinction to retain in a rule intended to implement and achieve the several goals of section 484(a)(3). Past defaulters should, under these objectives, qualify for new loans only if they have demonstrated their intention to honor Title IV, HEA loan obligations.

Similarly, the restrictions placed on borrower discharge in bankruptcy pose some deterrent to potential defaulters, but otherwise bear no relation to the several goals of section 484(a)(3): A borrower who has defaulted has thereby caused a loss to the public and demonstrated a lack of creditworthiness. Statutory restrictions on discharge in bankruptcy of student loans simply embody the standards Congress intended defaulters to satisfy to escape further collection action on past loans. The Bankruptcy Code plainly treats current and future loan decisions very differently from collection actions on past loans, and a discharge reflects no judgment on the debtor's creditworthiness for future transactions. The Code does not allow debtors to insist that lenders honor loan commitments already made, and does not prohibit lenders from discriminating against a debtor who applies for a new loan; in so doing, Congress defined how the fresh start given the debtor by a bankruptcy discharge would operate for new loan transactions, even among private parties. The amended regulations would do no more than apply that same distinction between freedom from collection action and entitlement to new credit to Title IV, HEA lending.

Changes: None.

Comments: A commenter argued that section 484(a)(3) of the HEA, on which this proposal is based, does not bar new grants or loans to defaulters whose loans were discharged in bankruptcy, because those loans are no longer owned and therefore no longer in default within the meaning of that statute. The commenter further argued that there is no basis for regarding a student who has a loan discharged in bankruptcy as "in default" when determining the student's eligibility for a new loan, but not "in default" when determining the student's eligibility for new grant or work assistance. The same commenter argued that the proposed change to §668.7(f) is an attempt prohibited by 11 U.S.C. 524 to force the borrower to repay a discharged debt. The commenter argued that *Goldrich* v. *New York State Higher Education Services Corporation*, 771 F.2d 28 (2nd Cir. 1985), on which the Secretary relied in proposing this change, did not address his prohibition and does not support use of this kind of disqualification rule by the Secretary. The commenter argued that because guaranty agencies face potentially reduced reinsurance payments when their default claims grow, they have a legitimate interest in the creditworthiness of the borrower that supports their use of the kind of rule approved in *Goldrich*. The commenter argued that the Secretary, on the other hand, must reinsure or directly guaranty all loans to all applicants and cannot adopt a rule that takes credit risk into account.

Discussion: Because the Secretary and the public bear between 80 and 100 percent of the cost of borrower defaults under the GSL programs and, indirectly, a significant share of borrower defaults under the Perkins Loan program, the Secretary has a far stronger financial interest than guarantors or institutions in preventing those losses. As discussed with regard to an earlier comment, section 484 of the HEA requires the Secretary to take prior defaults into account in determining eligibility for new Title IV, HEA aid. Section 668.7 contains the various requirements for individual student eligibility common to all the Title IV, HEA assistance programs. Those prerequisites had been set forth in the various Title IV, HEA program regulations; as pertinent here, the proposed language would actually reinstate 45 CFR 177.201(b)(3), a provision adopted by the Secretary in 1979 but revised to adopt the current rule of January 21, 1981, 46 FR 6329. The Secretary explained the 1981 change by stating that the nondischargeability provisions of the new Bankruptcy Code had "decreased" the need for the prior rule. (46 FR 6323) But, losses from defaulted loans have increased almost

tenfold since 1981, and that increase, and the increase in personal bankruptcy filings in recent years, provide more than ample cause to revisit and revise the 1981 determination that the rule was not necessary.

As the Secretary stated in proposing the instant change to §668.7(f), when the current rule was adopted in 1981, no courts had interpreted the effect of the Bankruptcy Code on this kind of rule regarding past defaults. However, each of the three courts that have since ruled on State statutes or regulations that are similar, if not identical, to the proposed rule have approved the use of this kind of provision with prior defaulters who apply for new loans. (*Goldrich* v. *New York State Higher Education Services Corp.*, 771 F.2d 28 (2d Cir. 1985); *In re Richardson*, 27 B.R. 560 (E.D. Pa. 560); *Elter* v. *Great Lakes Higher Education Corp.*, 95 B.R. 618 (Bankr. E.D. Wis. 1989); see also *Handsome* v. *Rutgers University*, 445 F. Supp. 1362, 1367 (D. N.J. 1978)). Each of those cases recognizes, as did the Secretary under the 1979 rule, that even if a discharge was granted on a defaulted loan, the guaranty agency, under the several State rules at issue in those cases with terms closely resembling the proposed rule, could properly regard the borrower as remaining in default.

Not only has the case law now recognized that the Bankruptcy Code prohibition against discrimination in the award of government grants and licenses dose not apply to credit transactions, including student loans, but also that adoption of this kind of nondiscriminatory rule—that a defaulter could qualify for a new loan only by agreeing to repay the defaulted loan—is not the kind of coercion to repay discharged debts that the Bankruptcy Code intended to prohibit. *Goldrich, supra*, at 31. Far from encouraging or condoning action by guarantors or institutions holding Perkins Loans to pursue collection of a loan discharged in bankruptcy, program regulations assume or explicitly require cessation of collection actions. See, e.g., 34 CFR 674.49(h). However, case authority now expressly recognizes that a lender may, without violating 11 U.S.C. 524, adopt and communicate to debtors a nondiscriminatory policy that defaulters do not qualify for new loans until defaulted loans are honored (i.e., the student is no longer in default for purposes of eligibility for Title IV, HEA program assistance.) See, e.g. *Brown* v. *Pennsylvania State Employees Credit Union*, 851 F.2d 81 (3d Cir. 1988)). The Secretary has used this policy in the past, and in the proposed revision of §668.7(f) would do nothing more than require Title IV, HEA lenders to resume the use of this nondiscriminatory rule.

Similarly, the distinction in proposed §668.7(f) between grant applications and loan applications rests not on section 484(a)(3) itself, which makes no such distinction, but on the need to harmonize that statute with 11 U.S.C. 525, which expressly proscribes this kind of treatment in grant-making decisions; it just as clearly permits such treatment of defaulters in new credit transactions.

Changes: None.

Comments: Some commenters questioned whether the proposed rule would be workable within the limits of current record-retention requirements or whether this rule would require indefinite record retention. Several commenters objected to what they perceived as the administrative burden imposed on them by the proposed rule.

Discussion: Current regulations require guarantors to retain GSL program loan records for at least five years from the date on which a bankruptcy discharge is granted, 34 CFR 682.414(a)(2), and institutions to retain Perkins Loan records for the same five-year period. 34 CFR 674.19(e)(3)(ii). The proposed rule does not require either party to retain records for longer than five years, although the Secretary may consider whether a longer period would be useful, at least for those loans discharged in bankruptcy. By requiring the defaulting borrower to make satisfactory repayment arrangements with the holder of the loan, the rule does place a burden on that borrower; by operation of 11 U.S.C. 524, any repayment agreement a borrower makes on the loan after filing for, or receiving, a discharge in bankruptcy, is legally enforceable only if approved by the bankruptcy court. The debtor, not the holder of the loan, must secure that court approval, and can reasonably be expected to secure that approval with the assistance of the counsel previously retained to handle the bankruptcy. In return for the substantial benefit of renewed payments, the rule would require the holder of the loan to do no more than negotiate an acceptable repayment agreement. The institution or guarantor that holds the loan can rely on its own records in reaching the reaffirmed repayment agreement or, if those records are no longer retained, on the records of the debtor.

Changes: None.

Comments: Several commenters noted that prior court challenges to the denial of student loan credit to prior defaulters who had defaulted loans discharged in bankruptcy involved guarantors who denied new loan approval in reliance on a state statute; they feared that in the absence of a state statute, lender compliance with the proposed rule would be more likely to expose those holders to suits for violation of the anti-discrimination provisions of the Bankruptcy Code, and opposed adoption of the rule on that ground.

Discussion: Each of the reported cases describes guarantor denial of approval of a new loan in reliance on a state statute or regulation that generally barred new loans to defaulters, without specific reference to treatment of defaulters discharged in bankruptcy. In each case, the guarantor applied the formal rule to bar approval to a discharged defaulter; in each case, that administrative interpretation of the state law was approved. As the preamble to the NPRM discussed at length, the Secretary relied on a Federal statute, section 484(a)(3) of the HEA, in proposing this rule. Therefore, lenders in the Title IV, HEA programs that comply with this provision are not only complying with a Federal, rather than a state, statute, but one which closely resembles the statutes approved in the case precedent. Compliance with the proposed regulation, based on a Federal statute, by a lending institution or guarantor is at least as legally supportable as these comparable actions based on an interpretation of a similar state law.

Changes: None.

Comments: A few commenters supported the development in §668.7(e) of a uniform standard of satisfactory arrangements to repay a defaulted loan as proposed by the Secretary in the preamble to the NPRM (56 FR 66497-66498). Several commenters opposed the development of a uniform standard of any type. Eleven commenters felt that the primary goal of satisfactory arrangements to repay should be to provide a mechanism for students to resume their

education and, therefore, to improve their earning capacities and repay their loans. To this end, the commenters asserted that multiple policies provide flexibility and can be more effective as a collection tool since they encourage the development of repayment arrangements that meet the specific needs of each student. Three commenters expressed their support of payment in full as a satisfactory arrangement to repay, but did not believe such an arrangement should be required of all students.

A majority of the commenters supported the development of a uniform standard, but did not support the standard proposed by the Secretary. Many of these commenters felt that standardization would enable all students to be treated consistently; however, they felt that requiring a student to make at least 12 consecutive monthly payments would discourage a student from furthering his or her education. Many commenters contended that fewer consecutive monthly payments would permit a student defaulter to demonstrate his or her good faith and intention to repay the loan, and at the same time provide him or her with the opportunity to reenter his or her educational program. As an alternative, a few commenters recommended that a student defaulter be required to make six consecutive monthly payments, while several commenters supported three consecutive monthly payments. A number of commenters felt that, in addition to requiring the student to make three consecutive monthly payments, the Secretary should require the holder of the loan for which repayment arrangements have been made to notify the school if the student is at least 60 days delinquent on loan payments during the loan period for which the new loan is certified. The student would lose his or her remaining eligibility until the loan is paid in full. A few commenters suggested that a uniform standard be modeled on the requirements of the Loan Rehabilitation Program; *i.e.*, 12 consecutive full payments should be defined as the greater of (1) the monthly payment amount required to repay the loan in full within ten years from the date the first of the 12 consecutive payments is received by the holder; (2) an amount stipulated by the holder (possibly with the requirement of a creditworthy cosigner); or (3) $50. A few commenters supported requiring payment in full as a uniform policy. These commenters felt any other arrangement would not be in the best interest of the taxpayer and would be burdensome to monitor. A few commenters suggested that the holder of the loan be permitted to set the loan amount to be paid each month. One commenter recommended that a student be required to pay at least half the total amount of the defaulted loan to regain eligibility. Two commenters believed it would be appropriate for the Secretary to establish an appeals procedure to provide students with recourse if they are dissatisfied with a holder's decision regarding satisfactory repayment arrangements. One commenter contended that the students often do not fully understand that it is their responsibility to obtain a statement from the holder of the loan to provide to the institution informing the institution of any repayment arrangements. The commenter recommended that the guaranty agencies provide written notification to the institution, upon request, indicating that such satisfactory arrangements have been made. Another commenter felt it is critical that the lender be allowed to differentiate between borrowers who are unwilling to repay and those who are unable to repay in order to determine the appropriate satisfactory repayment arrangements. The commenter believed that the student should provide the documentation necessary to support the decision made by the holder of the loan regarding the repayment arrangements. The commenter felt the lender should be responsible for collecting the documentation supporting the student's ability to repay with respect to Stafford, SLS, and PLUS loans and the institution should be responsible for obtaining the documentation from borrowers who had defaulted on Perkins Loans. One commenter recommended that defaulted loans that the borrower is currently repaying be sold back to the lender to relieve the guarantor of the obligation of monitoring the repayment process. One commenter recommended that the Secretary require the guaranty agencies to notify their employees, collection contractors, and defaulted borrowers of the existence of repayment options. One commenter recommended, in addition to establishing a standard requiring 12 consecutive monthly payments, that the Secretary establish an exception allowing the holder of the loan to determine that satisfactory repayment arrangements have been made when the borrower has paid the amount of the loan that would have been past due if the loan had not been accelerated, in addition to four consecutive monthly payments of an agreed upon amount.

Several commenters believed a minimum standard should be established. The commenters felt a minimum standard would provide a degree of consistency while still providing the flexibility to take an individual student's circumstances into account. One commenter felt it should be established that a student should not have to pay his or her loan in full to regain eligibility for Title IV, HEA assistance.

Discussion: See the discussion under **SUPPLEMENTARY INFORMATION.**

Changes: None.

Section 668.8 Eligible Program

Comments: One commenter endorsed the standardization of time required to complete a course of study by correspondence stating that the requirement seemed reasonable when compared to coursework in a classroom setting.

Discussion: The Secretary appreciates the commenter's support.

Changes: As a result of changes made by the Higher Education Amendments of 1992, the proposed change of §668.8 is not included in these final regulations. See the discussion under **SUPPLEMENTARY INFORMATION.**

Section 668.13 Factors of Financial Responsibility

Comments: A few commenters supported the changes in this section that require an institution to submit, upon the Secretary's request, an audited and certified financial statement of the institution for its latest two fiscal years. Three of these commenters asserted that the independence of the person certifying the financial statement is crucial to ensuring the credibility of the statement. Several commenters objected to these provisions. Many of those who objected felt that requiring institutions to submit an audited and certified financial statement will place an undue financial hardship on institutions. In particular, commenters believed the hardship would fall on small schools for which the cost of the required statement would have a serious economic impact, perhaps resulting in the closure of some institutions. One commenter contended that the proposed changes would not reduce abuse since the abuses have come from large and medium schools that could better afford the costs associated with the

submission of an audited financial statement and, therefore, would not be affected substantially by the proposed changes. The commenter recommended that the Secretary require a reviewed statement for initial certification for all schools and for continued certification of schools with an annual income under $2 million; however, schools with an annual income of more than $2 million that are subject to continued certification would be required to submit an audited statement.

Discussion: The Secretary also believes the independence of the person certifying the financial statement is crucial to ensuring the credibility of the statement. The Secretary is aware that the requirements of this provision might increase the financial burdens for some institutions; however, he believes that this measure is necessary to reduce fraud and abuse. This provision also is necessary to prevent the loss of the taxpayers' money that results when institutions that are not financially sound are permitted to participate in the Title IV, HEA programs and subsequently go out of business, leaving students with uncompleted education programs and outstanding liabilities. As stated in the NPRM (56 FR 66498), one of the purposes of this provision is to standardize the Department's evaluation of the financial condition of institutions. The proposal that the Secretary review certain documents only for those institutions with an annual income of over $2 million is inconsistent with the Secretary's goal to standardize the Department's procedure for evaluating the financial condition of institutions so that all institutions may be judged on the same basis. As the Secretary has no evidence to suggest that fraud and abuse occur only at large and medium schools, it would be unfair to limit this provision to these sectors. The Secretary believes an audited statement gives a more accurate indication of the financial position of an institution, and he believes that abuses by institutions of all sizes will be reduced by this requirement.

Changes: None.

Comments: Several commenters requested that the effective date for implementation of this provision allow institutions the time to consult with their accountants and organize the financial recording mechanisms needed to produce audited financial statements. One commenter suggested the Secretary require statements to be submitted within four months of the end of an institution's fiscal year.

Discussion: The Secretary agrees that it would be unreasonable to expect institutions to provide the required documents without providing sufficient time to gather the necessary information. Therefore, institutions will be required to submit an audited and certified financial statement upon the request of the Secretary beginning with any year end statement of September 30, 1993. The Secretary agrees that, in most cases, four months from the end of an institution's fiscal year is a sufficient period of time for an institution to submit an audited and certified financial statement. However, the Secretary believes that the required period of time for submission may vary based on the individual circumstances of the institution. Therefore, the Secretary will make a determination of what is an acceptable period of time for submission of the audited and certified financial statement for an institution based on the examination of that institution's individual circumstances.

Changes: Section 668.13(e) has been amended to state that an institution shall submit, upon the request of the Secretary, an audited financial statement within the time period specified by the Secretary.

Comments: Four commenters wanted to know what criteria the Secretary will use to determine which institutions will be required to submit an audited statement. The commenters wanted to ensure that the criteria are sufficient to prevent any differential treatment between proprietary and non-proprietary institutions. One commenter suggested that the Secretary require the submission of an audited statement from an institution whenever the institution undergoes a change of ownership or establishes a new branch. Two commenters recommended that all institutions be required to submit an audited statement on a regular basis to prevent differential treatment.

Discussion: As stated in the preamble to the NPRM (56 FR 66498), the Secretary will require an audited statement each time that an institution is subject to initial or continued certification to participate in a Title IV, HEA program. As in the past, the recertification process is triggered by a change of ownership resulting in a change of control or the addition of a new branch campus. The Higher Education Amendments of 1992 require the Secretary to prescribe regulations, as may be necessary, to require institutions to submit an audited and certified financial statement to the Secretary on at least an annual basis. An NPRM will be developed to implement the new provision.

Changes: None.

Comments: Two commenters were concerned that aid to students (and, consequently, the student's education) would be delayed while an institution prepares to submit the audited statement.

Discussion: Determination of an institution's financial responsibility under §668.13 is a condition of certification. Therefore, for institutions subject to initial certification, Title IV, HEA aid will not be available until the financial statement is submitted and the institution is eligible to participate in the Title IV, HEA programs. The Secretary believes that any delay in the initial certification process is justified if it ensures that only financially sound schools participate in the Title IV, HEA programs. Further, an institution will not lose its eligibility for Title IV funds while it completes the process of recertification.

Changes: None.

Comments: One commenter was concerned that this provision would require each subsidiary institution of a public corporation to submit an audited financial statement. The commenter felt such a requirement would be prohibitively expensive. One commenter suggested that, for those in a corporate environment, the Secretary should require the submission of an audited statement from the parent institution, an unaudited Profit and Loss statement (attested to by the Chief Executive Officer (CEO) of the parent company) for each branch, and the unconditional guaranty of the parent company guaranteeing the performance and satisfaction of the individual institution's obligation to the Department. Another commenter suggested that, for schools under a corporate umbrella, the Secretary require the submission of an audited statement from the parent corporation as well as the school. Commenters also wanted to know what information from other sources may be used by the Secretary in the determination of financial responsibility.

Discussion: Section 668.13(d) states, in part, that the Secretary may determine an institution to be financially responsible if the institution submits any document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or continue to participate in any Title IV, HEA program. Thus, the Secretary has the authority to require the items suggested by the commenters and any other documents from other sources pertaining to an institution's financial strength in determining an institution's financial responsibility. The provisions of §668.13(e) do not make changes to this section. Therefore, although §668.13(e) does not require each subsidiary institution of a public corporation to submit an audited financial statement, the Secretary may require the submission of such a document under §668.13(d).

Changes: None.

Comments: One commenter questioned whether the provision that permits the Secretary to require the institution to submit the accountant's work papers was in conflict with the standard practice of requesting an accountant's work papers through a court subpoena.

Discussion: The Secretary is aware that the subpoena procedure to obtain an accountant's work papers may be necessary if the accountant does not submit his or her work papers voluntarily. This requirement does not represent a change from previous regulations.

Changes: None.

Comments: Several commenters suggested that proprietary institutions should be required to submit financial data to commercial credit reporting agencies instead of being required to submit an audited statement. These commenters suggested that the Secretary publish a format for the presentation of financial statements to permit the submission of financial information gathered by other agencies. Two commenters suggested that the Secretary require a reviewed statement (which creates working papers for every line item) from an institution or its parent school.

Discussion: The Department is responsible for monitoring the use of Title IV funds. The Secretary believes the determination of an institution's financial responsibility through the examination of an audited statement is crucial to carrying out this responsibility. As a part of this examination, the Secretary believes it may be necessary to look at the accountant's calculations and notes to the financial statement which a credit reporting agency would not necessarily keep on file. Further, since an institution would have to provide source documentation to the commercial credit reporting agencies (or any other outside agency), it would be just as easy for the institution to provide this documentation to the Department. A reviewed statement does not provide the degree of accountability and accuracy the Secretary believes is necessary to determine an institution's financial responsibility.

Changes: None.

Comments: Two commenters recommended that the Secretary require that an institution submit, upon the request of the Secretary, an audited statement for three complete years. The commenters noted that three years is generally regarded as the minimum period of time necessary to draw conclusions about historical trends in an entity's financial health.

Discussion: The Secretary believes the evaluation of a two year period of time is sufficient to determine an institution's financial strength. Further, pursuant to §668.13(d), the Secretary may request that an institution submit any document that demonstrates that the institution has sufficient financial responsibility to begin or continue to participate in any Title IV, HEA program. Thus, the Secretary has the authority to look at other necessary financial information from previous years for those institutions.

Changes: None.

Comments: Three commenters asserted that guaranty agencies should have the authority to request that institutions submit audited statements. The commenters maintained that this authority is necessary in order for guaranty agencies to conform to proposed §682.401(b)(5) of the Guaranteed Student Loan regulations (published in the **Federal Register** November 20, 1990, 55 FR 48324) which requires guaranty agencies to determine a school's financial responsibility.

Discussion: The November 20, 1990 proposed Guaranteed Student Loan regulations mentioned by the commenter do not require guaranty agencies to determine a school's financial responsibility. Moreover, current regulations (as redesignated by the final regulations published in the **Federal Register** December 18, 1992, 57 FR 60280) permit a guaranty agency to establish standards and procedures for school participation in the program. 34 CFR 682.401(b)(17)(i)(B). The Secretary encourages agencies to use these standards and procedures to require schools to submit audited financial statements.

Changes: None.

Comments: Two commenters suggested that the term "fiscal year" be changed to "one-year accounting period" to avoid confusion among institutions who use calendar year accounting periods.

Discussion: An institution may define its fiscal year as any one year period it deems appropriate.

Changes: None.

Comments: One commenter recommended that the Secretary require the inclusion of a Statement of Changes in Financial Position in addition to a Balance Sheet and Income Statement.

Discussion: The Secretary has the authority to request these documents under §668.13(e) as they are related statements of income, earnings, and cash flow.

Changes: None.

Comments: One commenter suggested that the Secretary require minimum capitalization of all schools. One commenter recommended that the Secretary consider an institution's net worth to debt ratio at approximately a rate of 3 or 4 to 1.

Discussion: Minimum capitalization and an institution's net worth to debt ratio are already addressed under

§§668.13(c)(1) and 668.13(c)(2). The December 23, 1991 NPRM did not propose changes to these sections.

Changes: None.

Section 668.22 Distribution Formula for Institutional Refund and for Repayments of Disbursements Made to the Student for Noninstitutional Costs

Comments: Thirty commenters found the Secretary's rationale for the change (i.e., to address an inherent inequity between students who have paid all of their institutional charges prior to dropping out and students who have not paid all of their institutional charges) to be sound. Four commenters shared the Secretary's view that students who have made cash payments toward their education costs should not be penalized. One commenter commended the Department's efforts to provide detailed information and examples in the summary of changes. Many commenters felt the changes would require institutions to do away with any cash payment plans and demand payment up front from all students, regardless of their ability to pay. The commenters contended that this would create a hardship for students and the institution and would deny further access to education for students who cannot afford to pay in one lump sum. The commenters asserted that it is the very students that Title IV aid is supposed to help that will be harmed by this change. One commenter asserted that need analysis is intended to determine a student's appropriate contribution to educational expenses. The commenter felt that to use a complicated method such as the refund and repayment procedures is duplicative, contradictory to this belief, and reneges on the promise of access and choice, as well as causes inequities among students. The commenter was not certain that either the current or proposed methods can be adequately explained to enable them to be implemented in a fair and equitable manner. Several commenters asserted that the addition of extra steps to the refund procedures intensifies the frustration of dealing with already complicated procedures and creates additional burden for the institution. A few commenters asserted that the additional paperwork and the necessary internal audits would add cost. Two commenters urged the Secretary to extend the comment period.

Discussion: The Secretary believes the equity to the student provided by the change and the reaffirmation of the basic principle of financial aid that a family makes its contribution first before financial aid is expended, override the commenters' concerns and better serve the recipients of Title IV, HEA program assistance. The Secretary recognizes that some institutions utilize cash payment plans; however, this is an institutional decision over which the Secretary has no control. The costs incurred as a result of the execution of this provision are normal costs of doing business. The Secretary believes the intricacy of the present refund formula is due to the Department of Education's efforts to take into account institutional refund policies while ensuring that students are treated fairly and equitably. The Secretary received 47 comments on this section which he believes are representative of the public opinion and, therefore, he does not believe an extension of the comment period is warranted.

Changes: None.

Comments: Several commenters asked the Secretary to define more clearly "scheduled cash payment," in particular the point in time that the amount of the scheduled cash payment is determined and what is meant by "charges not covered by financial aid." Many commenters questioned how the requirement, which makes reference to payment periods, would be applicable to institutions without standard academic terms. One commenter asserted that the concept of "student contribution" is appropriate for the determination of financial eligibility, but not for the determination of a refund.

The commenter contended that if such an amount is used, it should be the same amount as has been determined in the Expected Family Contribution (EFC) calculation. Several commenters questioned whether late disbursements of GSL, Pell, or campus-based funds would be included as part of the scheduled cash payment. One commenter wanted to know whether late disbursements of aid other than Title IV aid would be included as part of the scheduled cash payment.

Discussion: The scheduled cash payment is determined when the student withdraws or drops out. At that point in time, the scheduled cash payment would be any institutional charges not already paid by financial aid for the payment period. The institution (including an institution without standard terms) must attribute by payment period any cash payments due as well as any cash payments received in order to determine the scheduled cash payment for the payment period in the same manner in which institutions attribute GSL proceeds. The definition of payment period for purposes of institutions without standard academic terms is found in §668.22(c). The Secretary would like to clarify that the "scheduled cash payment" referred to in the regulation is not the same as a student's EFC. A student's EFC, under the campus-based and GSL programs, is derived as a result of the Congressional Methodology and is used to determine a student's financial need. However, the Secretary recognizes that it is not always possible to meet this need with outside sources of aid. The Secretary refers to the unmet need for institutional costs along with the portion of the student's EFC contributed toward institutional cost as a student's scheduled cash payment. The Secretary agrees with the commenters that late disbursements of Title IV aid should be excluded from a student's scheduled cash payment for purposes of this calculation. The Secretary considers a late disbursement of Title IV aid to be any amount scheduled to be paid by financial aid that the student has been awarded that is payable to the student even though the student has withdrawn or, in the case of Stafford, SLS, or PLUS program funds, the amount for which the student is eligible under 34 CFR 682.207 of the Guaranteed Student Loan regulations. Section 682.207(d) of the Guaranteed Student Loan regulations provides, in part, that under certain circumstances, a lender, with the prior approval of the guaranty agency, may disburse Stafford, SLS, or PLUS funds after the student has ceased to be enrolled on at least a half-time basis. Section 682.207 also provides that a guaranty agency may approve a lender's request to disburse under these circumstances only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for a period of enrollment for which the loan was intended. However, for purposes of §668.22, only the amount of the loan that will be paid for institutional charges for the payment period will be excluded from the determination of a student's scheduled cash payment under §668.22(a)(3). The Secretary does not believe it is appropriate for an institution, in calculating the scheduled cash payment, to take into account aid that a student would have been eligible to receive but for which he or she delayed application or chose not to apply. Additionally, the Secretary does not

believe it is appropriate to take into account late disbursements of aid other than Title IV aid as the Secretary does not have the authority to ensure that the provider of the aid will make the disbursement and will not require the borrower to refund the amount of the late disbursement. The Secretary believes it is necessary to clarify what is meant by the term "financial aid" for purposes of §668.22. For purposes of this section, financial aid is assistance that a student has been or will be awarded from Federal, State, institutional or other scholarship, grant or loan programs.

Changes: Section 668.22(a)(3) has been amended to exclude late disbursements of Title IV, HEA program funds from the determination of a student's scheduled cash payment for a payment period. A new paragraph (f) has been added to provide a definition of "financial aid."

Comments: Three commenters felt a uniform tuition refund policy (for example, the *pro rata* refund formula) is necessary to prevent adversely affecting students who attend institutions with more liberal refund policies, while unjustly rewarding those who attend institutions with minimal refund policies.

Discussion: The Higher Education Amendments of 1992 require each institution participating in any Title IV, HEA program to have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received Title IV assistance (including PLUS loans received on the student's behalf) if the student does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance was provided. This statutory requirement is similar to the regulatory requirement of a fair and equitable refund policy that is applicable to the GSL programs only. An NPRM will be developed to implement the new provision.

Changes: None.

Comments: Two commenters recommended that the calculation used to determine how much of a refund is to be returned to the Title IV programs and the calculation to determine the institutional refund should be based on the same amount of Title IV aid. One commenter noted that currently, in order to determine how much of a refund is to be returned to the Title IV programs, a fraction is used that is based on the amount of Title IV funds *awarded*. However, in determining the amount of the refund, the school uses the actual amount paid for institutional charges.

Discussion: The Secretary agrees that an inconsistency exists. The Secretary agrees that it would be more equitable to use the amount of assistance received by the student, instead of the amount of assistance awarded to the student, in the determination of the portion of the refund that the institution shall return to the Title IV, HEA program(s). As in the past for purposes of this section, "assistance received" includes funds a parent receives on behalf of a student under the PLUS program.

Changes: The word "awarded" has been replaced with the word "received" in §668.22(a)(6)(ii) which contains the fraction used to determine the portion of the refund that an institution shall return to the Title IV, HEA program(s). A conforming change has been made to §668.22(b)(3)(ii) which contains the fraction used to determine the portion of an overpayment the institution shall return to the Title IV, HEA program(s).

Comments: One commenter recommended that this change not be required until the 1993-94 award year.

Discussion: The Secretary agrees that the implementation of this requirement warrants a later effective date than normally stipulated. The Secretary believes that, for purposes of this section, an effective date of September 30, 1993 will provide institutions with an adequate amount of time for implementation.

Changes: None. However, the "Effective Date" paragraph has been revised to reflect the effective date of September 30, 1993 for this section.

Comments: One commenter was concerned about limiting the discussion of educational costs to institutional charges since students also incur noninstitutional costs of education that are legitimately recognized components of the cost of attendance upon which aid is based.

Discussion: The Secretary recognizes that students incur noninstitutional costs of education that are legitimately recognized components of the cost of attendance upon which aid is based. The proposed changes apply to the refund calculation which only deals with institutional charges. The repayment of noninstitutional costs is handled under §668.22(b).

Changes: None.

Comments: One commenter felt this change created an inequity between a student living on campus and a student living off campus.

Discussion: A difference in the refund determination will exist anytime the institution is calculating a refund for two students who are charged different amounts. The new regulations differ from the former regulations by taking into account the amount of the scheduled cash payment paid by the student.

Changes: None.

Comments: One commenter suggested the Secretary replace the term "payment period" with the term "period of enrollment for which the student is charged" throughout §668.22.

Discussion: This issue was addressed in response to public comment in the December 1, 1987 final regulations (52 FR 45712). The provisions in §668.22 were originally adopted to correct the situation where refunds for payment periods beyond the one in which the student withdrew (*i.e.*, refunds calculated based on a student's period of enrollment that encompassed more than one payment period) were included in the refund formula. In the December 1, 1987 regulations, the Secretary limited the "amount paid for institutional charges" and the "amount retained by the institution" to be amounts for the payment period in which the student withdrew.

Changes: None.

Comments: One commenter requested that the Secretary explain how the *pro rata* refund requirements of

§682.606 relate to §668.22 since the two approaches sometimes seem to be in conflict. The commenter noted that institutions that are not subject to the *pro rata* calculation must attribute Stafford, SLS, and PLUS loans by payment periods because §668.22 concerns only the payment period in which the student withdrew. The *pro rata* regulations refer to calculating the refund based upon the uncompleted portion of the period for which the student has been charged. The commenter questioned whether, in applying a *pro rata* refund, an institution that charges for an entire program up front would have to attribute GSL's by payment periods and whether this would skew the calculation. Under the pro rata refund requirements of §682.606, it would appear that cash payments should not be attributed by payment periods although they are attributed by payment periods under the requirements in §668.22. The commenter also wanted to know what becomes of the cash payment attributed to unattended payment periods and how the proposed rules would affect non-term institutions that charge up front for an entire program, especially when the student withdraws during the second payment period. The commenter asserted that the refund regulations are difficult to apply in those cases because the payment period concept does not correspond to the manner in which institutional costs are charged.

Discussion: The December 23, 1991 NPRM did not propose changes in this area. The Department has provided guidance on the implementation of the *pro rata* refund calculation in the Federal Student Financial Aid Handbook, Dear Colleague letters, and other literature. The Secretary does not believe it is necessary to revisit this issue in these final regulations.

Changes: None.

Section 668.33 Statement of Registration Status

Comments: Four commenters supported the addition of a new condition under which an institution may waive the requirement that a student file a Statement of Registration Status. Four commenters did not believe that students beyond the registration age should be required to obtain an advisory opinion from the Selective Service, stating whether a student's failure to register was knowing and willful, to establish aid eligibility. One commenter felt that the percentage of students who would admit that they did not register on purpose would be too small to justify the additional administrative burden created by this requirement. Three commenters preferred that a student who failed to register with the Selective Service and is now 26 years old or older be able to certify on the Statement of Registration Status that he is beyond registration age and establish eligibility accordingly.

Discussion: The Military Selective Service Act (50 U.S.C. App. 462) provides that any person who is required to register for the Selective Service and fails to do so shall be ineligible for Title IV assistance. The Act further provides that a person cannot be denied any Federal benefit if he failed to register with the Selective Service if he can demonstrate that he did not knowingly and willfully fail to register. Therefore, a student who was required to register pursuant to the Military Selective Service Act (50 U.S.C. App. 462) but who did not register with the Selective Service system and is now beyond the age at which he can register must provide an explanation for his failure to do so. Simply requiring a student to sign the Statement of Registration Status certifying that he is beyond the age at which he can register would not establish whether he knowingly and willfully failed to register. Further, information available to the Selective Service might not be available to the financial aid administrator. The Secretary believes that an advisory opinion is necessary for the financial aid administrator to make an accurate determination of the student's eligibility. Although the financial aid administrator is required to collect an advisory opinion, he or she will not have to collect a signed Statement of Registration Status from these students. Therefore, the Secretary believes this requirement does not impose a significant additional burden. However, to reduce administrative burden, the Secretary has decided that students 26 years old or older who have received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National guard should not be required to file a Statement of Registration Status or obtain an advisory opinion. These students have clearly demonstrated by their voluntary enlistment for active duty that they did not intend to avoid military service. See also the discussion under **SUPPLEMENTARY INFORMATION.**

Changes: The Secretary has amended §668.33(b) to provide that the requirement that a student file a Statement of Registration Status does not apply to students who are 26 years old or older who have received a DD Form 214 showing release or discharge from active duty in the armed forces other than the reserve forces and National Guard.

Section 668.34 Model Statement of Educational Purpose and Registration Status

Comments: Two commenters recommended that the Secretary not require institutions to make the changes to the Statement of Educational Purpose and the Statement of Registration Status for the 1992-93 award year. One commenter was concerned that institutions would have to incur the additional cost of reprinting the award letters. One commenter asserted that requiring institutions to re-collect the statements from students would be confusing for students and burdensome for both the students and the institutions.

Discussion: The Secretary agrees that requiring institutions to reprint and re-collect the Statement of Educational Purpose and the Statement of Registration Status for the current academic year would be unduly costly to institutions and burdensome to institutions and their students.

Changes: An institution should revise the Statement of Educational Purpose and the Statement of Registration Status to reflect the changes made by these regulations for the next printing of these statements. All institutions are required to collect the amended statements beginning with the 1994-95 award year. Unamended statements signed by students prior to the effective date of these regulations (July 1, 1994) will be acceptable for the determination of student eligibility. Public Law 100-369 provides that residents (instead of citizens) of the Freely Associated States (the Federated States of Micronesia and the Marshall Islands) are eligible to receive assistance under the Pell Grant, Supplemental Educational Opportunity Grant, and College Work-Study Programs. Corresponding changes have been made in this final regulation to the Statement of Educational Purpose and Registration Status. See also the discussion under **SUPPLEMENTARY INFORMATION.**

July 23, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends Subpart A of the Institutional Eligibility Under The Higher Education Act of 1965, As Amended regulations and subpart A of the Student Assistance General Provisions regulations. The Secretary amends the former regulations to make a technical, clarifying change in the definition of the term "clock hour." The Secretary amends the latter regulations to eliminate a serious abuse of the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). This latter amendment establishes a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible program under §668.8(a)(2)(iii), (iv), and (v), and the amount of title IV, HEA program assistance that a student who is enrolled in that eligible program may receive. For these purposes, the formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction.

These final regulations apply only to calculations made for Title IV, HEA program purposes. They do not interfere with the supervision or control over the curriculum, program of instruction, or administration of an educational institution.

EFFECTIVE DATE: These regulations take effect either September 7, 1993 or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

Following the effective date, §§668.8(c) and (d) and 668.9 shall apply on and after January 1, 1994. However, with regard to any new educational program in which the first day of instruction occurs on or after the effective date, these sections shall apply on and after the effective date.

SUPPLEMENTARY INFORMATION: On October 1, 1990, the Secretary published a notice of proposed rulemaking in the **Federal Register** (55 FR 40148) proposing amendments to §668.8 and the addition of §668.9 of the Student Assistance General Provisions regulations. The NPRM included a discussion of the major issues involved in the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Description of Proposed Changes (page 40148)—an explanation of the basis for the proposed regulatory formula.

Background on Clock Hour to Credit Hour Conversion Abuses (page 40148)—institutions that convert from clock hours to credit hours and the use of credit hours in undergraduate vocational programs without regard to the number of clock hours offered in those programs.

Results of These Abuses (pages 40148-40149)—circumvention of minimum program length requirements and increases in the amounts of Title IV, HEA program assistance without corresponding increases in the amount of educational instruction provided.

Limited Scope of the Proposed Regulations (page 40149)—no effect on transferability of academic credit.

Institutions Affected by Proposed Regulations (page 40149).

Expected Impact of Proposed Regulations on a Currently Eligible Program (page 40149).

Proposed Effective Date for Implementation (page 40149)—Phase-in of implementation for students enrolled in programs that measure academic progress in credit hours in a cross-over payment period.

The Secretary is making significant changes in the provisions proposed in the NPRM, and is also further clarifying the definition of the term "clock hour" in 34 CFR part 600.

Section 668.8 Eligible Program

The Secretary amends §668.8 by adding a new paragraph (c) and a new paragraph (d). Under those paragraphs, if an institution offers an undergraduate vocational educational program in credit hours, the institution must use the formula contained in paragraph (d) to determine if that program satisfies the requirements of an eligible program set forth in §668.8(a)(2)(iii), (iv), or (v), and the number of credit hours in that program for title IV, HEA program purposes, with the following exceptions.

An institution need not use the formula in paragraph (d) to measure the number of credit hours in any undergraduate vocational educational program that is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary. In addition, an institution need not use that formula to measure the number of credit hours in any undergraduate vocational educational program if each course within that program is fully acceptable for credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

The proposed regulatory formula required that each semester, trimester, or quarter credit hour in an undergraduate vocational program had to include a minimum number of clock hours of instruction for the purpose of determining whether that program qualified as an eligible program under the title IV, HEA programs, and the amount of assistance a student enrolled in that program could receive under those programs. In the NPRM, the formula required that each semester or trimester hour include at least 37.5 clock hours of instruction, and each quarter hour include at least 25 clock hours of instruction. The Secretary based the formula upon the definition of the term "academic year" that had been in use under the title IV, HEA programs for almost 20 years. Under this long-standing, commonly accepted definition, the Secretary had defined an academic year as at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours of instruction. Thus, 37.5 clock hours was obtained by dividing 900 clock hours by 24, and 25 clock hours was obtained by dividing 900 clock hours by 36.

In proposing this formula, the Secretary recognized that the formula did not take into account the number of hours of outside preparation that a student must undergo for each hour of classroom instruction. The Secretary did not

include outside preparation hours as part of the formula because of the difficulty of independently determining whether the number of outside hours an institution might claim was accurate when the institution applied to the Department of Education (ED) for eligibility for a program. However, the Secretary realized that a consequence of the failure to include any hours of outside preparation may have been to require too many classroom hours for each credit hour for certain programs.

During the comment period, many commenters objected to the formula because they believed that it required too many clock hours for each credit hour. In addition, many commenters objected to applying this formula to undergraduate vocational programs that lead to degrees requiring at least two years of study because they contended that the abuses that gave rise to the proposed rules did not apply to that type of program.

The Secretary believes that the points made by these commenters were well taken, and accordingly, in the final regulations, has made several significant modifications to the proposed regulations and the proposed formula. First, the Secretary has decided to exclude from the coverage of the formula undergraduate vocational programs that lead to a degree that requires at least two academic years of study. Moreover, the Secretary is also excluding from the coverage of the formula any undergraduate vocational program if all the courses in that program are fully acceptable for credit towards a degree that requires at least two academic years of study. This latter exclusion would apply even though the program itself is not fully acceptable toward the degree.

An example of the first type of program that is not covered by the regulatory formula is a two-academic-year program the successful completion of which results in an example of the second type of program.

Junior College A offers a certificate program in computer repair and also offers an associate degree program in computer operation. As part of the certificate program, a student is required to take four courses in various aspects of computer repairs. All the courses in the computer repair certificate program are fully acceptable toward the associate degree program in computer operation. However, a student in the associate degree program may take no more than two of the four computer repair courses for the associate degree program, although the student may take any two of those four courses. Thus, although Junior College A's computer certificate program is not fully acceptable toward its associate degree program in computer operation, because the certificate program requires four instead of two computer repair courses, the certificate program is nevertheless excluded from the regulatory formula, because each individual course in the certificate program is acceptable for full credit toward that degree program.

The last significant modification the Secretary has made is in the formula itself. The Secretary has reduced the classroom hours required for each quarter credit hour or semester credit hour by approximately 20 percent. Thus, under the revised formula, each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours. Further, based upon the Secretary's recognition that vocational educational programs require some measure of outside preparation, the Secretary will presume that each program that must be measured under the formula provides outside preparation at least equal to the hours represented by the difference between the proposed formula and the final formula, and institutions will not have to document that outside preparation.

An institution may challenge a determination of program ineligibility under 34 CFR 600.41.

Section 668.9 Relationship Between Clock Hours and Semester, Trimester, or Quarter Hours in Calculating Awards

The Secretary is also adding a new §668.9. In this new section, the Secretary requires an institution that offers a program described in §668.8(c) to use the formula contained in §668.8(d) to calculate the amount of title IV, HEA program assistance that an affected student is eligible to receive. However, the application of this formula does not prevent an institution from using its own credit-hour measurements of that program for its own purposes.

Clarification of Existing Regulatory Provisions

The Secretary is revising the definition of the terms "clock hour" in 34 CFR 600.2 and "eligible program" in 34 CFR 668.8 to eliminate perceived ambiguities in those definitions, notwithstanding the fact that the Secretary believes that the current definitions are not ambiguous.

To demonstrate the number of clock hours in an educational program, certain institutions have aggregated the number of minutes of instruction provided in that program, and have divided those minutes by 50. This practice is inconsistent with the Secretary's long-standing interpretation under the current definition of the term "clock hour." Under that interpretation, if an institution seeks to determine the number of clock hours in an educational program by aggregating the number of minutes in that program, it has to divide those minutes by 60 rather than 50.

The revised definition of a clock hour requires that each clock hour of instruction takes place in a discrete 60-minute period. The Secretary believes that this revision, as well as this discussion, should eliminate any further contentions regarding the proper calculation of clock hours.

With regard to the definition of the term "eligible program," that definition left out the obvious requirement that the eligible program be offered by an eligible institution.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 5,000 parties submitted comments on the proposed regulations. An analysis of the comments and changes in the regulations since publication of the NPRM is published as an appendix to the final regulations. Included in this analysis are comments received during public negotiated rulemaking sessions.

These regulations were not subject to the negotiated rulemaking process mandated for changes made to parts B, G, and H of title IV of the HEA by the Higher Education Amendments of 1992, Public Law 102-325. Nevertheless, the Secretary invited further public comment on the proposed regulations during the public negotiating sessions, held during the weeks of January 4 and February 1, 1993, in order

to obtain additional advice from the higher education community in the development of these final regulations.

During these sessions, several negotiators suggested changes that the Secretary adopted in the final regulations, and most of the negotiators supported these regulations, as revised.

Appendix

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make, are not addressed.

Comments Relating to Institutions and Programs Covered by the Regulatory Formula:

Comments: Many commenters believed that the NPRM was too sweeping in its approach to the problems identified, and affected too broad a scope of institutions and educational programs. Many of these commenters also believed that the proposed regulations would have an adverse impact on institutions and educational programs that have not engaged in the type of abuses of the title IV, HEA programs described by the Secretary in the NPRM.

Many commenters writing on behalf of community colleges strongly believed that proprietary institutions were primarily responsible for the abuse that the proposed regulations were attempting to eliminate, and it was unfair to apply the proposed formula to degree-granting, public institutions with academic calendars made up of standard terms. These commenters objected to the application of the proposed formula to the undergraduate vocational training programs offered at community colleges, because the programs are already subject to stricter State and accrediting agency controls than are programs at proprietary institutions.

Many commenters writing on behalf of proprietary institutions believed that community colleges and other public institutions would be less affected by the regulations, and that the proposed regulations would disproportionately affect programs at proprietary institutions. These commenters provided examples of educational programs offered by proprietary institutions that would be affected by the regulations, such as two-year programs leading to an associate degree, and argued that similar programs at community colleges would not be affected. While many of these commenters acknowledged that some proprietary institutions have engaged in the type of abuse identified in the NPRM, they believed these actions were not sufficiently widespread to warrant such a strong response from the Secretary. Some commenters believed that the proposed regulatory formula in §668.8(c) should not apply to programs offered at proprietary institutions that lead to a degree or are two-year programs that are acceptable for full credit toward a baccalaureate degree at an eligible institution.

Discussion: The Secretary believes that the abuse described in the NPRM exists across all sectors of the higher education community that provide undergraduate vocational training. However, based upon public comment and further review, the Secretary agrees with commenters that the abuse does not arise in all types of vocational programs, but is concentrated in short-term vocational programs that do not lead to associate or higher degrees, or are not fully acceptable toward such degrees.

Changes: A change has been made. Proposed §668.8(c) has been revised so that the regulatory formula in proposed §668.8(d) will not apply to undergraduate vocational educational programs of at least two academic years in length that provide an associate, bachelor's, professional, or equivalent degree as determined by the Secretary. (The Secretary understands that there may be some institutions that offer two-year or longer vocational programs that lead to a degree, but are precluded by State law from granting an "associate," "bachelor's," or "professional" degree for those programs. The Secretary generally considers such a degree to be a degree equivalent to an associate, bachelor's, or professional degree).

In addition, the regulatory formula in §668.8(d) will not apply to an institution's undergraduate vocational educational programs if each course within those programs is fully acceptable for credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree, as determined by the Secretary, provided that degree requires at least two academic years of study. In addition, students enrolled in the above-described undergraduate vocational educational programs will not have their title IV, HEA program awards calculated in accordance with the formula contained in §668.8(d).

Comments: A number of commenters argued that the Secretary should rely on accrediting agencies to curb this abuse, and that the Secretary should use the accrediting agency recognition process as a means to require accrediting agencies to address this problem.

Discussion: The Secretary disagrees with the commenters, because it is the experience of the Secretary that several of the accrediting agencies are part of the problem giving rise to these regulations rather than part of the solution. A review of Department records disclosed that between 1983 and 1990, 415 institutions converted their programs from clock hours to credit hours, with 84 percent of those conversions occurring in proprietary institutions. In addition, during that period, 284 new proprietary institutions of higher education using credit hours rather than clock hours were designated by ED as eligible institutions. For each conversion, an accrediting agency approved the institution's conversion and the number of converted credit hours; for each new institution, an accrediting agency for that institution approved the number of credit hours in that institution's vocational programs.

Many accrediting agencies that accredit vocational programs have established conversion formulas that allow one semester or trimester hour for 15 clock hours of lecture or classroom instructions, 30 clock hours of laboratory work, or 45 hours of externship work. However, these conversion formulas do not require any hours of preparation outside the classroom, laboratory, and externship when determining the work needed for a semester, trimester, or quarter hour. As a result, the use of these formulas produced the very abuse that these regulations have been developed to prevent, excessive credit hours for the number of hours of education provided by an institution.

For example, an academic year, in part, is defined to be 24 semester hours or 900 clock hours, while an eligible program, in part, is defined to be 16 semester hours or 600 clock hours. However, under these formulas, only 360 clock hours of classroom instruction are needed to qualify for one academic year of 24 semester hours (360 divided by 15 =

24), and only 240 clock hours of classroom instruction are needed to qualify as an eligible program (240 divided by 15 = 16). If a student takes 24 clock hours a week, the minimal requirement in clock hours for a full-time student, it would take that student only 10 weeks, or 2½ months, to complete an eligible program and only 15 weeks, or less than four months, to complete a one-academic-year program.

Changes: None.

Issues Relating to the Proposed Formula

Comments: Many commenters believed that the relationship between clock hours and credit hours proposed in the NPRM was unreasonable and arbitrary. Many commenters noted that the formula did not take outside preparation into account in determining credit hours and that absence resulted in too many classroom hours for each credit hour. Several commenters suggested that the proposed formula be modified to reduce the number of classroom hours for each credit hour in recognition of outside preparation for those hours.

Discussion: In proposing this formula in the NPRM, the Secretary did not include outside preparation hours as part of the formula because of the difficulty of independently determining whether the number of outside hours an institution might claim was accurate when the institution applied to ED for eligibility for a program. The Secretary believed that such a failure would not have a significant impact on most programs covered by the formula, but the Secretary understood that it would have an unfair impact for certain programs. However, the Secretary agrees with the commenters who suggested that the formula should be revised to take outside preparation into account, yet not require the institution to document that preparation.

Following the suggestions of the commenters, the Secretary has reduced the classroom hours required for each quarter credit hour or semester credit hour by approximately 20 percent. Thus, under the revised formula, each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours. Further, based upon the Secretary's recognition that vocational educational programs require some measure of outside preparation, the Secretary will presume that each program that must be measured under the formula provides outside preparation at least equal to the hours represented by the difference between the proposed formula and the final formula, and institutions will not have to document that outside preparation.

Changes: The Secretary has revised §668.8(d) by requiring that each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours.

Comments: Many commenters pointed to the standard of 15 clock hours per semester hour and 10 clock hours per quarter hour as an acceptable norm for the number of clock hours required for a semester or quarter hour. Several commenters pointed to differences between the proposed regulations and the credit-hour standards recognized by the Department of Veterans Affairs (VA) for its educational assistance programs and the Social Security Administration (SSA) for its survivors' benefits program. A number of commenters objected to the Secretary's proposal because it does not distinguish between modes of instruction, i.e., lecture or theory, laboratory, and shop or practicum.

Discussion: As noted in the discussion relating to accrediting agencies, the Secretary believes that the ratio of 15 clock (lecture) hours for one semester hour and 10 clock (lecture) hours for one quarter hours produces an excessive number of credit hours because those ratios do not take into account outside preparation.

Under the standard unit of measuring credit in higher education, the Carnegie Unit of Credit, one credit hour generally consists of one hour of classroom work and two hours of outside preparation a week over the course of an academic term. For example, one semester hour requires one hour of classroom work and two hours of outside preparation a week during a semester. If a semester lasted 15 weeks, one semester hour would require approximately 45 hours of work. If a formula converts clock hours into semester hours by using a 15/1 formula, that formula takes into account only one/third of the hours of work required for a semester hour.

With regard to commenters' mention of a different treatment of the relationship between clock hours and credit hours in survivors' benefits programs administered by the SSA, that agency currently administers no benefit program that involves survivors enrolled in postsecondary education. Moreover, when that agency did have such a program, it did not establish a relationship between clock hours and credit hours. It merely developed a definition of a full-time student. See 20 CFR 404.369.

With regard to the VA's treatment of this subject, it is far from clear after reading the relevant statutes and regulations governing the VA education benefit programs, 20 U.S.C. 1788 and 38 CFR 21.4270, that the VA's treatment of the clock-hour/credit-hour relationship is at odds with the approach adopted in these final regulations.

With regard to the failure to recognize modes of instruction, the Secretary believes that the modified final regulations eliminate any need to distinguish between those modes.

Changes: None.

Other Comments

Comments: Most commenters acknowledged that the abuse that the Secretary described in the NPRM, a purported increase in the quantity of education provided in vocational programs created solely by the conversion of the measurement of those programs from clock hours to credit hours, is a serious problem. However, there was no general consensus among the commenters as to the best way to address the problem. In addition, many commenters disagreed with the Secretary's proposed solution.

Discussion: The Secretary appreciates that the commenters understand that the abuse described in the NPRM is a serious problem and is disappointed in the lack of consensus among the commenters with regard to the best solution to the problem. However, the Secretary believes that the absence of a consensus does not justify inaction in the face of this problem.

Changes: None.

Comments: Several commenters noted that amendments to the statutory definitions in the HEA of the terms "eligible program" and "academic year" by the Higher Education Amendments of 1992, Public Law 102-325, negated any need for these regulations. In those new statutory definitions, there is now a requirement that an eligible program be at least 15 weeks (or in some cases 10 weeks) and that an academic year consist of at least 30 weeks of instructional time.

Discussion: The Secretary agrees that those statutory changes help in reducing the abuse of claiming an excessive number of credit hours for a program. However, the Secretary believes that these changes do not alleviate the need for these regulations since the statutory changes address a different mode of creating excessive credit hours for programs, i.e., compressing those programs into short periods of time. The statutory change does not address the creation of excessive credit hours for undergraduate vocational programs by the measurement of those programs in credit hours. Therefore, the Secretary believes that this regulation is still needed to prevent this abuse.

Changes: None.

Comments: Many commenters perceived the proposed regulations as an intrusion into the academic affairs of postsecondary educational institutions. Some commenters believed that the proposed regulations violate sections 103 of the Department of Education Organization Act and 432 of the General Education Provisions Act, which prohibit the Secretary and other officials of ED from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution.

Discussion: The Secretary does not agree with the commenters. As the Secretary stated in the preamble to the NPRM, these regulator provisions "are not intended to and do not interfere with the supervision or control over the curriculum, program of instruction or administration of an educational institution." 55 FR 40148. Nor do they intrude into the academic affairs of postsecondary educational institutions. These provisions apply only to calculations made for title IV, HEA program purposes, i.e., whether a program qualifies as an eligible program under §668.8, and the amount of title IV, HEA program assistance that a student enrolled in an eligible program may receive.

Changes: None.

Comments: Many commenters felt that the proposed regulations were discriminatory against students in vocational, trade, and technical programs.

Discussion: The Secretary does not agree with the commenters. These regulations are designed to prevent institutional abuses of the title IV, HEA programs. The abuses involve vocational programs. To the extent that the regulations curb or prevent further abuse, the regulations do not discriminate against students enrolled in vocational programs. The regulations simply ensure that these students are enrolled in eligible programs for title IV, HEA program purposes, and further ensure that the students receive the aid for which they are eligible, if the programs in which they enroll are eligible programs.

Changes: None.

Comments: Some commenters complained about the administrative burden that the regulations would impose on institutions having some eligible programs that are affected by the regulations and some that are not. Many commenters argued that the proposed regulations would require an institution to create two systems for determining a student's eligibility for, and amount of, title IV, HEA program assistance. One system would govern its students enrolled in vocational educational programs covered by the regulatory formula, while the other would govern its students enrolled in educational programs that were not covered by the formula.

Discussion: The Secretary understands that an institution may have to use two systems for determining its students' eligibility for, and amount of, title IV, HEA program assistance. The Secretary believes that the revision to §668.8(c) that excludes various classes of undergraduate vocational programs from the regulatory formula will limit, and in many cases remove, the need for institutions to use two systems. However, an institution currently makes distinctions with regard to its students *vis-a-vis* the title IV, HEA programs. For example, distinctions are based upon the type of program in which the student is enrolled, a student's enrollment status, and whether the student is a regular student. In any event, the small administrative burden that some institutions may face does not justify inaction given the seriousness of the problem.

Changes: None.

Comments: Some commenters argued that the regulations should distinguish between eligible programs that are primarily "academic" in nature and those that are strictly "vocational."

Discussion: The regulations distinguish between eligible programs that are academic in nature and those that are vocational. The final regulations apply only to educational programs that qualify as part of an eligible institution under the HEA because the programs are vocational, i.e., they prepare students for gainful employment in a recognized occupation. See §668.8(a)(2)(iii), (iv), or (v).

Changes: None.

Comments: Several commenters predicted that institutions would add extra clock hours of instruction to existing educational programs in order to qualify students for more title IV, HEA program assistance. Many predicted that the added clock hours would be in the form of shop or externship credit.

Discussion: If institutions affected by these regulations add meaningful additional training to their educational programs, students in those programs should be eligible for title IV, HEA program assistance that reflects that additional training. However, the Secretary strongly cautions institutions from adding additional clock hours with no educational value, such as study halls, in order to qualify students for title IV, HEA program assistance, or additional assistance. If an institution adds clock hours of the latter type, it will be liable for any title IV, HEA program funds it receives as a result of that addition, and may be terminated from participation in the title IV, HEA programs.

Changes: None.

Comments: A number of commenters predicted that the loss or reduction of eligibility of Federal Pell Grant

Program assistance to students enrolled in undergraduate, short-term, vocational training programs affected by these regulations will result in a greater student dependency on Federal Stafford loans, and will increase the default risk these students pose. Many commenters believed such a consequence would be counterproductive to the Secretary's initiative to reduce defaults in the Federal Stafford Loan and Federal SLS programs.

Discussion: The Secretary disagrees. As the Secretary previously stated, students should receive the title IV, HEA program assistance for which they qualify. Moreover, as a result of changes made to the HEA by the Higher Education Amendments of 1992, Public Law 102-325, the definition of an eligible program is the same for the Federal Pell Grant Program and the Federal Stafford Loan and Federal SLS Programs. Therefore, if a program is not an eligible program for the Federal Pell Grant Program, it is not an eligible program for the Federal Stafford and Federal SLS Programs. As a result, these regulations will not substantially increase the number of borrowers in those programs.

Changes: None.

Comments: Many commenters argued that the proposed regulations will have a negative impact on students from low-income, disadvantaged backgrounds who enroll in the undergraduate vocational training programs affected by these regulations. Many of these commenters believed that the proposed regulations will discourage many of these students from pursuing postsecondary education.

Discussion: The Secretary disagrees. These regulations will protect low-income, disadvantaged students and all other students from being victimized by unscrupulous schools that claim to offer a quantity of education that is greater than the quantity of education they actually provide. Furthermore, commenters provided no evidence that these regulations would discourage students from pursuing postsecondary education.

Changes: None.

Comments: Some commenters believed that the proposed regulations would discourage students from attending short-term training programs.

Discussion: The Secretary disagrees. These commenters have provided no evidence to substantiate these claims, and the Secretary has no reason to believe that this will occur.

Changes: None.

Comments: A number of commenters believed that the proposed regulations would have a serious economic impact on many postsecondary institutions. Many commenters writing on behalf of proprietary institutions believed that the proposed regulations would force many proprietary schools to close. Several commenters objected to the Regulatory Flexibility Act certification in the NPRM on the grounds that the regulations would have a significant impact on a substantial number of small entities.

Discussion: If these regulations have any negative economic impact, that impact will fall almost exclusively on those institutions that have exaggerated the educational quantity of their educational programs. There is no evidence that suggests that these regulations will force schools to close. Only those small entities that perpetuate clock-hour-to-credit-hour conversion abuses would be impacted by these regulations and not the entire sector of small institutions that are classified as small businesses or organizations under provisions in the Regulatory Flexibility Act.

Changes: None.

PART 674-FEDERAL PERKINS LOAN PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Appendix E-Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment before January 1, 1986

Summary of Comments

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429 unless otherwise noted.

Subpart A-General Provisions

Sec. 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program, authorized by Title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV-E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common of all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV-E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, Sec. 137(d)(1))

Note: (b)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are—

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been—

(i) Repaid or canceled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by that institution according to its own standards and practices.

*Full-time undergraduate student: An enrolled undergraduate student who is carrying a full-time academic workload (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Fund (Perkins Loan Fund): A fund established and maintained according to Sec. 674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

*Institution of higher education (institution): A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who—

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

*Need-based employment: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087hh)

Note: (b) amended July 21, 1992, effective September 18, 1992.

***Sec. 674.3 Application.**

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

Sec. 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

Secs. 674.5-674.7 [Reserved]

Sec. 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in Sec. 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see Sec. 674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see Sec. 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc-1, 1094)

(Approved by OMB under control #1840-0535)

Note: (a) introductory text and (a)(3) amended July 21, 1992, effective September 18, 1992.

Sec. 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

Sec. 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under Sec. 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of it allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.11 [Reserved]

Sec. 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is—

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has not received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV-E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

Sec. 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd-1087hh)

Sec. 674.14 Overaward.

*(a) Overaward prohibited. (1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the loan amount, and the total resources including the loan exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Direct or Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) Liability for and recovery of overpayments. (1) A student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its

loan fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, constitute such a reasonable effort.

(Authority: 20 U.S.C. 1087dd, 1087hh)

***Sec. 674.15 Coordination with BIA grants.**

(a) To determine the amount of a loan for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

Sec. 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section—

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

(Approved by OMB under control #1840-0535)

Sec. 674.17 Federal interest in allocated funds—transfer of Fund.

*(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

Sec. 674.18 Use of funds.

(a) General. An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in Sec. 674.8(b).

(b) Administrative cost allowance. (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the Pell Grant, CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

Note: (b)(4) amended July 21, 1992, effective September 18, 1992.

Sec. 674.19 Fiscal procedures and records.

(a) Fiscal procedures. (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) Account for Perkins Loan Fund. (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) Deposit of ICC into Fund. An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) Retention of records—(1) Records. Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) Loan records. (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

*(3) Period of retention. (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) Manner of retention of records. (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—.

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

(Approved by OMB under control #1840-0535)

Note: (e)(2)(i) amended July 21, 1992, effective September 18, 1992.

Sec. 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa-1087hh)

(Approved by OMB under control #1840-0535)

Subpart B-Terms of Loans

Sec. 674.31 Promissory note.

(a) Promissory note. (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Appendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) Provisions of the promissory note—(1) Interest. The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) Repayment. (i) Except as otherwise provided in Sec. 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Direct Loans made before October 1, 1980 and Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see Sec. 674.33(b)), extensions of repayment (see Sec. 674.33(c)), or deferments (see Secs. 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) Cancellation. The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

(4) Prepayment. The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) Late charge. (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with Sec. 674.43(b)(2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(1) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(2) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(3) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) Security and endorsement. The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) Assignment. The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) Acceleration. The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) Cost of collection. The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) Disclosure of information. The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Note: (b)(2)(i)(B), (b)(3), and (b)(5)(iii)(A) amended July 21, 1992, effective September 18, 1992.

Sec. 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of Sec. 674.31.

(Authority: 20 U.S.C. 1087dd)

Note: (a)(2)(ii) and authority citation amended July 21, 1992, effective September 18, 1992.

Sec. 674.33 Repayment

(a) Repayment Plan. (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accrued interest.

(iv) Principal.

(b) Minimum repayment rates—(1) Rounding monthly repayment amounts. If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) Minimum monthly repayment of Defense loans from one institution. An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) Minimum monthly repayment of Defense loans from more than one institution. If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) Minimum monthly repayment of Direct loans and Perkins loans from one Institution. The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) Minimum monthly repayment of Direct loans and Perkins loans from more than one institution. If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions. If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) Minimum monthly repayment of loans from one institution with different interest rates. (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) Differing grace periods and deferments. If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) Hardship. The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see Sec. 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) Extension of repayment period—(1) Hardship. The institution may extend a borrower's repayment period due to hardship.

(2) Low-income individual. (i) For Federal Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i)(A) or (B) of this section. The term low-income individual means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, Sec. 137(d) of Pub. L. 92-318)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1) and (a)(3)(iii) amended July 21, 1992, effective September 18, 1992. Paragraph (c)(2) amended December 21, 1992, effective February 4, 1993.

Sec. 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer (see Sec. 674.57);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.57);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its institution program; and

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Note: (b)(1), (c)(3) through (c)(5), (d)(3) and (d)(4) introductory text, (d)(4)(iii), and (e)(2) amended July 21, 1992, effective September 18, 1992. Paragraphs (b)(1)(i) and (ii) and (c)(5)(i) through (v) added January 12, 1994, effective September 18, 1992.

Sec. 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.56);

(2) A Peace Corps volunteer;

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness

to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Note: (b)(1), (c) introductory text, (c)(3), (c)(4), and (g) amended July 21, 1992, effective September 18, 1992. Paragraphs (b)(1)(i) and (ii) and (c)(4)(i) through (v) added January 12, 1994, effective September 18, 1992.

Sec. 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see Sec. 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) and (c) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

Note: (b)(1), (c)(3), and (d) amended July 21, 1992, effective September 18, 1992. Paragraphs (b)(1)(i) and (ii) added January 12, 1994, effective September 18, 1992.

Sec. 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a)(1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(Authority: 20 U.S.C. 425, 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under Sec. 674.53, 674.54, 674.55, 674.56, 674.57, or 674.58.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(Approved by OMB under control #1840-0535)

Note: (a)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be canceled, the amount due on the uncancelled loan is the amount established in Sec. 674.31(b)(2), loan repayment terms; Sec. 674.33(b), minimum repayment rates; or Sec. 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

Subpart C-Due Diligence

Sec. 674.41 Due diligence—general requirements.

(a) General. Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower or any endorser.

(b) Due diligence with regard to endorser. If a borrower does not respond satisfactorily to the final demand letter required in Sec. 674.43(c)(2), an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser using the steps described in this subpart.

(c) Coordination of information. An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.42 Contact with the borrower.

(a) Exit interview. (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(x) General information with respect to the average indebtedness of students who have loans at that institution under Part E of the Higher Education Act of 1965, as amended.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a)(1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) Contact with the borrower during the initial and post-deferment grace periods. (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980 and Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

(Approved by OMB under control #1840-0581)

Note: (a)(2)(x) added and (b)(1)(i) amended July 21, 1992, effective September 18, 1992.

Sec. 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment:

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to Sec. 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with Sec. 674.31(b)(5)(See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in Sec. 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Note: (a) and (b)(3) introductory texts amended July 21, 1992, effective September 18, 1992.

Sec. 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) Use of the Department of Education's skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) Litigation to collect the borrower's account is barred under the applicable statute of limitations;

(2) The account is assigned to the United States; or

(3) The account is written off under Sec. 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in Sec. 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with Sec. 674.43(f), the institution shall—

(1) Report the defaulted account to a credit bureau, unless specifically prohibited by State law; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus. An institution may select a bureau which serves—

(i) The areas from which the major portion of its students was drawn; or

(ii) The areas in which all or a major portion of its alumni/ae now reside.

(2) An institution shall report, according to the reporting procedures of the bureau, any changes in account status to the bureau to which it reported the defaulted account, and shall respond promptly and accurately to any inquiry from any bureau regarding the information reported on the loan account.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either—

(i) Litigate in accordance with the procedures in Sec. 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall, unless specifically prohibited by State law, refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in Sec. 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until recovery in litigation to collect the account would be barred under the applicable statute of limitations.

(e)(1) Subject to Sec. 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and Secs. 674.44, 674.46, 674. 48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

(Approved by OMB under control #1840-0581)

Note: (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii)(B) amended and new (c)(1)(iii) added July 21, 1992, effective September 18, 1992.

Sec. 674.46 Litigation procedures.

(a)(1) If the collection efforts described in Sec. 674.45 do not result in the repayment of a loan, the institution shall determine at least annually, until litigation to collect the account is barred under the applicable statute of limitations, whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Perkins, National Direct and National Defense Student Loans held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in Sec. 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in Sec. 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.47 Costs chargeable to the Fund.

(a) General: Billing costs. (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to Sec. 674.43.

(b) General: Collection costs. (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to Secs. 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to Sec. 674.43 to demand payment of overdue amounts on the loan.

(c) Waiver: Late charges. The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) Waiver: Collection costs. Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) Limitations on costs charged to the Fund. The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower;

(1) A reasonable amount for the cost of a successful address search required in §674.44(b).

(2) Costs related to the use of credit bureaus as provided in §674.45(b)(1).

(3) For first collection efforts pursuant to §674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to §674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charge collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under §674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

(f) Records. For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in Sec. 674.19.

(g) Write-offs. (1) An institution may write off an account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges.

(2) An institution that writes-off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992. Paragraphs (d), (e), and (g) amended December 21, 1992, effective February 4, 1993.

Sec. 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under Sec. 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately upon receipt in an institutional trust account; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower promptly in an institutional trust account, after deducting its fees, if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out Sec. 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Authority: 20 U.S.C. 424, 1087cc).

(Approved by OMB under control #1840-0581)

Sec. 674.49 Bankruptcy of borrower.

(a) General. If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(1) Against the borrower; and

(2) If the borrower has filed for relief under Chapter 12 or 13 of the Bankruptcy Code, against any endorser.

(b) Proof of claim. The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) Borrower's request for determination of dischargeability. (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) Request for determination of non-dischargeability. The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) Chapter 13 repayment plan. (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not

made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than seven years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) Resumption of collection from the borrower. The institution shall resume billing and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition, and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition; and

(B) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(g) Resumption of collection from the endorser. The institution shall resume billing and collection action against an endorser of a borrower who has filed for relief under Chapter 12 or 13 of the Code after the borrower's case has been completed or dismissed, or the stay applicable to such action has been lifted.

(h) Termination of collection and write-off. (1) An institution shall terminate all collection action and write off a loan on which there is no endorser if it receives—

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than seven years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed; or

(ii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(3) An institution may write off a loan on which there is an endorser only after it has exhausted the procedures in this subpart with regard to the endorser.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Note: (c)(1), (2), and (3); (e)(4)(i); (f) introductory text, (f)(2), (f)(2)(ii)(A), and (f)(3); (h)(1)(i) and (ii) amended July 21, 1992, effective September 18, 1992. Paragraphs (e)(4)(i)(A) and (B) and (f)(2)(i) and (ii) added January 12, 1994, effective September 18, 1992.

Sec. 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in Sec. 674.45(a) and litigation, if required under Sec. 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is $25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of

this subpart, including at least a first level collection effort as described in Sec. 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) If the institution has a default rate as calculated under Sec. 674.2 greater than 7.5 percent as of June 30 of the second year preceding the submission period, documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Note: (c)(6) amended July 21, 1992, effective September 18, 1992. Paragraph (a)(2) amended December 21, 1992, effective February 4, 1993.

Subpart D-Loan Cancellation

Sec. 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) Academic year or its equivalent for elementary and secondary schools and special education: (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) Academic year or its equivalent for institutions of higher education: A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) Chapter I children: Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) Elementary school: A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) Handicapped children: Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) Local educational agency: (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) Secondary school: (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) State education agency: (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) Teacher: (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1)).

Sec. 674.52 Cancellation procedures.

(a) Application for cancellation. To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under Secs. 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(Authority: 20 U.S.C. 425, 1087ee.)

Note: (d) amended July 21, 1992, effective September 18, 1992.

Sec. 674.53 Teacher cancellation—Direct and Perkins loans.

(a) Cancellation for full-time teaching in an elementary or secondary school serving low-income students. (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) Cancellation for full-time teaching of the handicapped. (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) Cancellation rates. (1) To qualify for cancellation under paragraph (a) or (b)(low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) Teaching in a school system. The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) Teaching children and adults. A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1067ee.)

Sec. 674.54 Teacher cancellation—Defense loans.

(a) Cancellation for full-time teaching. (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) Cancellation for full-time teaching in an elementary or secondary school serving low-income students. (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) Cancellation for full-time teaching of the handicapped. (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) Teaching in a school system. The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) Teaching children and adults. A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3).)

Sec. 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a)(1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425.)

Sec. 674.56 Cancellation for military service.

(a) Cancellation on a Defense loan. (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) Cancellation of a Direct or Perkins loan. (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance

accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee.)

Sec. 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee.)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992.

Sec. 674.58 Cancellation for death or disability.

(a) Death. An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) Permanent and total disability. (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) No Federal reimbursement. No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) Retroactive. Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Authority: 20 U.S.C. 425 and 1087dd and Sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

(Approved by OMB under control #1840-0535)

Sec. 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be canceled for teaching. Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

Sec. 674.60 Reimbursement to institutions for loan cancellation.

(a) Reimbursement for Defense loan cancellation. (1) The Secretary pays an institution each award year its share of the principal and interest canceled under Secs. 674.54 and 674.56(a).

(2) The institution's share of canceled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) Reimbursement for Direct and Perkins loan cancellation. The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under Secs. 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Appendix A to Part 674-Promissory Note-Perkins Loan

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ________, promise to pay to ______ (hereinafter called the Institution), located at ________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

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I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures For Receiving Deferment or Cancellation. I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning nine (9) months after the date I cease to be at least a half-time regular student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3) (A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5) (A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5) (B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled payments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services); in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

XI. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XII. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XIII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIV. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XVI. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVII. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature ____________ [(seal)]

Date ________ 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (borrower must provide)

____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner

____

[(seal)]

Date ______________ 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (cosigner must provide)

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd)

Note: Appendix A amended July 21, 1992, effective September 18, 1992.

Appendix B to Part 674-Promissory Note-Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _______, promise to pay to _______ (hereinafter called the Institution), located at _________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal

Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures for Receiving Deferment or Cancellation. I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning six (6) months after the date I cease to be at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense, and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the

Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent for the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid

balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(8) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another Institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None".)

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature ____________________ (seal)]

Date __________, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner ________________ [(seal)]

Date __________, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (cosigner must provide)

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd.)

Note: Appendix B amended July 21, 1992, effective September 18, 1992.

Appendix C to Part 674-Promissory Note-Perkins Loan-Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraphs may be included at option of institution.]

I, ________, promise to pay to ________ (hereinafter called the Institution), located at ________ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures for Receiving Deferment or Cancellation. I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the Annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) (A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine (9) months from the date this loan is made, or if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), 111(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments as determined by the Institution. I understand that if my monthly payment for all loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time

active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayment if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act, or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

XI. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

XII. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XIII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIV. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XVI. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVII. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature __________________ [(seal)]

Date _________, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (borrower must provide)

____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner __________________ [(seal)]

Date _________, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (cosigner must provide)

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

Note: Appendix C amended July 21, 1992, effective September 18, 1992.

Appendix D to Part 674-Promissory Note-Direct Loan-Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ________, promise to pay to ________ (hereinafter called the Institution), located at ________, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures for Receiving Deferment or Cancellation. I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine (9) months from the date this loan is made, or, if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX, and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer

making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraphs VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Law Enforcement or Corrections Officer Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the

interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the fifth complete year of that service.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU HAVE READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature ____________ [(seal)]

Date ___________, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (borrower must provide)

____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner
__________________ [(seal)]

Date _________, 19__

Permanent Address (Street or Box Number, City, State, and ZIP Code)

____

Social Security Number (cosigner must provide)

____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

Note: Appendix D amended July 21, 1992, effective September 18, 1992.

Appendix E-Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Note.—In the below table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

Monthly repayment schedule	Installment due date—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1	....	....	....	....	....	$1
2nd Past due installment	....	$1+$2	....	....	....	....	3
3rd Past due installment	....	....	$3+$2	....	....	....	5
4th Past due installment	....	....	....	$5+$2	....	....	7
5th Past due installment	....	....	....	....	$7+$2	....	9
6th Past due installment	....	....	....	....	....	$9+$2	11
Cumulative maximum subtotals	1	4	9	16	25	36	....

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3	....	....	$3
2nd Past due installment	....	$3+$3	....	6
3rd Past due installment	....	....	$6+$3	9
Cumulative maximum subtotals	3	9	18	....

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6	....	$6
2nd Past due installment	....	$6+$6	12
Cumulative maximum subtotals	6	18	....

Summary of Comments

Perkins Loan Program: Final Regulations, November 30, 1987—Comments and Responses

Section 674.41 Due diligence—general requirements.

Comment: Several commenters disagreed with the proposal that institutions be required to use the same collection procedures to collect Perkins Loans that they use to collect other institutional debts. Several commenters indicated that the procedures used in collecting institutional debts should not be used in collecting Perkins Loans because the students may no longer be in school and because of the specialized provisions in the Perkins Loan Program such as deferment, postponement, and cancellation. Several commenters suggested that the determination as to which procedures to use should be left to the institution.

One commenter suggested that the regulations require the withholding of transcripts, grades, and further services regardless of institutional practices.

Response: A change has been made. The Secretary agrees with the commenters that using the same procedures to collect Perkins Loan debts as are used to collect other institutional debts may not be effective because of the dissimilarities between the two debts. Therefore, the proposal previously made in Sec. 674.41(a)(3) that the institution use those collection procedures to collect Perkins Loans that it uses to collect other debts has been deleted. There is no statutory mandate that institutions withhold academic transcripts and other services; however, an institution may adopt that practice as its institutional policy.

Comment: Several commenters stated that the regulations should not mandate that all information be shared routinely among offices of the institution. The commenters suggested that institutional offices should be required to share information only as necessary to support billing and collection functions, and that the word "routinely" should be eliminated.

Response: A change has been made. The Secretary agrees with the commenters and in order to reduce regulatory burden, has reworded Sec. 674.41(c) to require institutional offices to share information as necessary to support billing and collection functions.

Comment: Several commenters believed that the proposed rule required the institution to share routinely current addresses obtained from the Internal Revenue Service (IRS) skip-tracing service. They stated that these addresses should not be "routinely shared" unless the lending institution receives independent verification of the address. Several commenters, based on the same reading of the rules, expressed concern that institutions that followed the rules as written would incur penalties for misuse of IRS skip-tracing information.

Response: No change has been made. The regulations required sharing of information "in order to determine" certain information needed by the institution for its billing and collection functions. When arranging the exchange of information among its offices, the institution can readily identify the student without dissemination the address derived from IRS reports. The regulation does not require the offices of the institution to share information for any other purpose, and neither authorizes nor permits disclosure of information derived from the IRS to components of the institution which are not directly responsible for collecting Perkins Loan accounts.

Comment: Many commenters supported the proposal in Sec. 674.41(b) which directed the institution to attempt to collect from the endorser after a borrower fails to respond to the first overdue notice. Several of these commenters suggested that collections from endorsers should begin 90 days after the final demand letter. Others felt that the regulations should require endorsers on all loans unless the borrower is over 21 years of age, thus making the endorser (usually a parent) more aware of the responsibility that the student has undertaken.

Many of the commenters raised concerns regarding the use of an endorser on loans. Some of the concerns were: the extent to which the endorser is legally responsible for payment; when the endorser should be required to repay the debt; the amount to be repaid; and whether or not all the steps in the due diligence requirements should apply to the endorser.

The majority of the commenters believed that the decision on when an endorser should be required to make repayments should not be mandated early in the billing cycle, but should be at the institution's discretion.

Response: A change has been made. Based on the comments received, the Secretary has changed the regulation to require the institution to bill the endorser after the borrower fails to respond to the final demand letter rather than to the first overdue notice. The Secretary believes that contact with the endorser prior to the final demand letter is not cost-effective or appropriate because the borrower is the actual recipient and beneficiary of the loan and should be held primarily responsible for repayment to the extent possible. However, by his or her endorsement, the endorser agreed to be responsible for the amount advanced on the note if that amount was not repaid by the borrower. The sample promissory note contains no limitation on the endorser's promise to pay the amount due on the note, and the institution must therefore attempt at that point to collect from the endorser the full amount then due from the borrower.

Section 674.42 Contact with the borrower.

Comment: Several commenters stated that some institutions prepare a new promissory note with each advance to a student, and providing students with copies of all notes at the exit interview as required in Sec. 674.42(a)(3)(ii), would needlessly duplicate paperwork.

Response: No change has been made. Borrowers may frequently have lost earlier copies provided to them. The Secretary believes that the burden of providing a borrower with a copy of his or her promissory notes at the exit interview is more than justified by the benefit derived from reinforcing the individual's awareness of the obligation to repay the debt.

Comment: Several commenters opposed Sec. 674.42(a)(2)(vi) which states that an institution must disclose, at the exit interview, an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and a statement that the borrower has the right to prepay all or part of the loans at any time without penalty.

The commenters were opposed to this disclosure requirement because they believed it is not the institution's responsibility to make such information know to a borrower. It is the belief of several commenters that institutions have no control or direct involvement in these procedures, and therefore, run the risk of misinforming students.

Response: No change has been made. The requirement that the institution explain any special options the borrower may have for loan consolidation or other refinancing of the loan and the borrower's right to prepay all or part of the loans at any time without penalty is mandated by Section 463A of the Higher Education Act of 1965, as amended (HEA).

Comment: One commenter stated that it appears that the Secretary has no statutory authority for requiring that institutions provide, during the exit interview, disclosure information required under the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98-79). The statute provides only that this information must be disclosed "prior to the start of the repayment period."

Response: No change has been made. Although the statute does not specifically require disclosure of this information to the borrower during the exit interview, it does require disclosure prior to the start of the repayment period. The Secretary concludes that providing this information during the exit interview is well suited to protect the Government's interest in securing repayment of the loans. This forum provides a suitable opportunity for the debtor to raise questions regarding the debt and receive an individualized response on that basis, and plainly falls within the Secretary's authority to adopt requirements necessary to protect the Fund against unreasonable risk of loss.

Comment: One commenter suggested that the scope of the exit interview be expanded further to include information on (1) possible assignment of the notes to the Department, (2) an institution's option to deny deferment when forms are not filed on a timely basis, and (3) the Department's use of IRS Federal refund tax offset.

Response: No change has been made. At the exit interview, the institution must provide the borrower with a copy of the promissory note. The model promissory notes published as Appendices to Part 674 explain that notes may be assigned to the Department, and that the institution may deny a deferment if it is not requested in a timely manner. Because the Federal tax refund offset program is still a pilot program, the Secretary does not believe that the institution should be required to notify the borrower of this collection tool at this time.

Comment: Several commenters suggested deleting Sec. 674.42(b)(2)(iii) which instructs an institution to contact a borrower with a nine-month grace period a third time at 240 days after the commencement of the grace period, because they believed that a third contact during the grace period would not encourage repayments. The commenters believed that a third notice would only serve to confuse a borrower who has begun repayment on a six-month grace period loan.

Several commenters recommended that the regulations require the institution to mail the second grace-period notice 180 days, instead of 150 days, after the commencement of the grace period in order to make the second notice correspond with the end of the grace period on six-month grace period loans and to space the notices on nine-month grace period loans more evenly. In addition, the commenters believed that the requirement to notify the borrower of the total amount to be repaid over the life of the loan in the first contact at 90 days should be deleted because it only repeats information provided the borrower in the exit interview.

Response: No change has been made. The grace period notifications were developed to ensure that the institution regularly communicates with the borrower before repayment is due to begin, in order to maintain contact with the borrower and ensure that the borrower understands his or her rights and responsibilities and therefore begins repayment or applies for appropriate deferment or cancellation benefits in a timely manner. The Secretary does not agree that the borrower should be sent the second grace period notification at the end of the grace period, as the purposes of the notice would not be served.

The spacing of the notifications was also established in order to limit institutional burden. In the case of a borrower with a six-month grace period, the borrower must be contacted twice during the grace period. The first notice, 90 days after the start of the grace period, serves as a useful reminder to the borrower of the responsibilities associated with the loan, including the duty to provide the institution with a current address. The second notice, 150 days into that period, is a second reminder timed to coincide with the billing notice required 30 days before the first payment is due. Sec. 674.43(a).

In the case of a borrower with a nine-month grace period, the borrower must be contacted three times during the grace period: 90 days, 150 days, and 240 days after commencement of the grace period. As with six-month grace period loan, the last notice is timed to coincide with the initial 30 day billing notice. Further, the 150 day notices may be combined for those borrowers who have loans with both six-month and nine-month grace periods. For those borrowers with both a six-month and a nine-month grace period loan, moreover, the institution should be able, in the second (150 day) and third (240 day) contact letters, to explain clearly the difference in repayment obligations on the two kinds of loans and eliminate the confusion hypothesized by the commenter.

Section 674.43 Billing procedures.

Comment: Several commenters opposed deleting the requirement that the institution maintain a list of borrowers with overdue payments, updated monthly. The commenters stated that institutions are required to maintain information on overdue accounts in the general conduct of lending activity.

Response: No change has been made. The Secretary is seeking to reduce regulatory burden where possible, and therefore has deleted the requirement to maintain a list of borrowers with overdue payments. The institution may maintain such a list if it so desires.

Comment: Many commenters objected to changing the current requirement that the institution send a statement of account thirty days and ten days, respectively, before the first payment due date and all subsequent due dates to the proposed thirty-day and fifteen-day notices of the repayment schedule because the change would require complete reprogramming of their entire current billing system.

Response: No change has been made. The thirty-day notice required before the first payment is due is the last notice required in the grace period and represents no change. Based on his experience, the Secretary concludes that a fifteen-day notice allows the borrower a more adequate response time than the current ten-day notice, and this justifies the initial costs of changing billing systems. Moreover, the institution can avoid this burden by using a coupon payment method.

Comment: Many commenters opposed the proposed rule which would require the institution to send final demand letters by certified mail.

Response: A change has been made. The Secretary concurs with the commenters and has deleted the requirement for use of certified mail for final demand letters.

Comment: Many commenters opposed the requirement that the debtor be given thirty days written advance notice before a defaulted loan is accelerated. These commenters stated that, in their opinion, the borrower would have already been given sufficient time to pay before the loan reached the point of acceleration. They also stated that a thirty-day response time would not convey an urgent need to contact the lender.

Response: No change has been made. Acceleration marks a serious stage of delinquency: after acceleration, cancellation rights lapse, and enforcement action begins. This procedure assures that the date of the acceleration coincides with the deadline for response to the final demand letter, and gives the institution additional flexibility to handle debtors who demonstrate some desire to avoid these consequences. The thirty-day advance notice allows the borrower one last chance to respond with sufficient payments to bring his or her account current, or arrange a satisfactory new repayment agreement with the institution. Moreover, because the institution can promptly send a final demand letter and notice of intent to accelerate to a debtor who has indicated unwillingness to cooperate in the past, Sec. 674.43(d)(1), use of a 30-day warning period before acceleration will not necessarily delay collection action against these debtors.

Comment: One commenter suggested that the regulations specify when and under what conditions an institution may accelerate a loan.

Response: A change has been made. Section 674.31 states that an institution may demand immediate repayment of the entire loan (including any late charges and accrued interest) if the borrower fails to make a scheduled repayment on time or to file for deferment or cancellation on time. Therefore, for clarification, the Secretary has expanded Sec. 674.43(e) to include a reference to Sec. 674.31. The paragraph has also been expanded to provide for a written notice informing the borrower of the acceleration date.

Comment: One commenter urged the Secretary not to require an institution to accelerate a loan where a debtor does not respond satisfactorily to the final demand letter, if acceleration would cause the amount then due to be greater than the jurisdictional limit imposed by a small claims court in which the institution intends to enforce the debt.

Response: The comment presents a good collection tactic, and no change is necessary to permit use of this tactic. The final rule does not require acceleration at any particular point in the institution's collection process.

Comment: Many commenters objected to the proposed requirement of a telephone contact in the billing procedures. The commenters stated that this proposal was contradictory to the intent of reducing cost and burden, and that it merely moves the phone call from the collections to billing cycle. They objected on the basis of cost-effectiveness, citing long distance charges and staff time. One of the commenters stated that billing staff who process routine accounts are not trained to be collection personnel.

Response: No change has been made. Department experience with collecting student loans has proven that telephone contact with the borrower is a highly effective method of collection. The Secretary believes that if this contact is required prior to beginning the more costly collection procedures, the necessity for taking further action may be eliminated.

Comment: Numerous commenters objected to the proposed requirement that the institution deposit funds collected through billing (Sec. 674.43), collection (Sec. 674.45), and litigation procedures (Sec. 674.46) in an insured interest-bearing account. Many of the commenters stated that their institutions were required by the Treasurer of the State to deposit all institutional funds to the State Treasurer's account. These funds are then invested by the Treasurer and become part of the State's General Fund. The commenters stated that none of the interest earned on such deposits accrues to the institution.

Response: No change has been made. Neither the statute nor the Perkins Loan regulations prescribe the location of accounts into which Perkins Loan funds are to be deposited, and neither bars their deposit in a State-administered account. Although this comment was apparently prompted by the requirement that institutions deposit funds in interest-generating accounts, it describes a practice which is in direct violation of the specific statutory requirement in 463(a)(2)(E) of the HEA that "any earnings of the funds" be deposited by the institution in the Fund. An institution that participates in the Perkins Loan program has received Federal funds from the Department on the basis of its agreement to administer those funds, loans made from them, collections from those loans, and any earnings on the funds in accordance with the statute and regulations. The institution, therefore, is responsible for depositing these earnings into the Fund, and under current law, without regard to this new regulatory requirement, is liable for any earnings by any party on those funds that are not deposited into the Fund. No provision of State law excuses the institution from responsibility for compliance with the agreement with ED and the statutory requirements it incorporates, and no provision of Federal law exempts such institutions from accountability for earnings not credited to the Fund.

Comment: Several commenters objected to depositing funds into interest-bearing accounts because the institutions rarely have any sizable balance in their Fund. These commenters expressed the concern that if they are required to keep funds in interest-bearing accounts, the banks will charge service fees and require that they keep compensating or minimum balances. At present, many banks do not require institutions to keep compensating balances, nor are they being charged service fees for those accounts.

Response: A change has been made. The Secretary continues to believes that an institution should use the same diligence in maximizing its return for the Fund as it would be expected to use on its own funds, and that this diligence requires constant comparation of charges and interest rates paid by competing financial institutions in order to find those which meet the needs of the Fund at the lowest net cost. However, to defray those costs, the Secretary has revised Sec. 674.8(a)(5) to require the institution to deposit into the Fund only the net earnings on Fund assets in these interest-bearing accounts and to offset bank charges against interest earnings.

Section 674.44 Address searches.

Comment: Many commenters remarked that use of the Department's skip-tracing service to locate borrowers would cause considerable delay and questioned whether institutions had to wait for results before beginning skip-tracing efforts as required in Sec. 674.44(b). One commenter suggested that skip-tracing should be done by either an institution or commercial firm. Other commenters stated that the proposal was, in their view, redundant, overly expensive and largely nonproductive.

Response: No change has been made. There is no cost to the Fund to use the Department's skip-tracing services. The Secretary considers the Department's turnaround time of four to six weeks to be reasonable and effective. Commercial skip-tracing costs are chargeable to the Fund; if a borrower can be located by use of the Department's skip-tracing service, those costs need not be incurred. Therefore, an institution is required to use the Department's free service before proceeding to the steps in Sec. 674.44(b), because use of this free service may spare additional charge to the Fund.

Comment: Several commenters expressed concern that requiring institutions to request an address correction from the U.S. Postal Service would be costly and ineffective. The commenters questioned whether the U.S. Postal Service is prepared to respond to all these requests and help defray the costs.

Response: A change has been made. Proposed paragraph (a)(3) regarding requests for an address correction from the U.S. Postal Service has been deleted. However, an institution is not prohibited from using this practice if the institution determines it to be an effective collection tool.

Comment: Many commenters suggested that reviewing telephone directories should be an institutional option, because small institutions with limited resources would not be able to comply with this proposal. They stated that institutions should be allowed to employ their own procedures. The commenters stated that if the telephone number is unlisted, the operator will not release any information. Directories are often out of date. One commenter suggested that the regulations say "telephone directories or inquiries of information operators * * *." The commenters also suggested that compliance with Sec. 674.44(b) should be an alternative, rather than an addition to, compliance with Sec. 674.44(a).

Response: A change has been made. The Secretary agrees with commenters regarding the need for an institution to retain flexibility to use directories or directory assistance to locate a borrower. Therefore, Sec. 674.44(a)(2) has been changed to allow for institutional discretion. These regulations do not preclude institutions from employing their own procedures; however, Departmental experience with the collection of assigned loans shows that the steps proposed in this section are effective tools for locating the borrower.

Comment: Several commenters suggested that the regulations should state that an address search should begin as soon as the first piece of returned mail is received, and that Sec. 674.44(a) be revised to read as follows: "If mail sent to a borrower is returned undelivered (other than unclaimed certified mail), an institution shall take steps to locate the borrower."

Response: A change has been made. The words "other than unclaimed mail" have been added to clarify the intent of the rule.

Comment: Many commenters opposed the proposal that an institution shall make reasonable attempts to locate the borrower at least twice a year until litigation procedures to collect would be barred under the statute of limitations. Many of these commenters questioned whether institutions would be required to maintain skip-tracing activities after the notes have been assigned to the United States and also if these proposed rules preclude notes from being assigned or written-off until the statute of limitations has expired. Several of these commenters stated that it is not a good practice to tie any collection procedure to the statute of limitations, especially when other sections of the regulations governing this program require that institutions prove due diligence prior to assignment. Two of these commenters suggested the paragraph be rewritten as follows: "The institution shall make reasonable attempts to locate the borrower at least twice a year until the account is written-off or assigned."

Response: A change has been made. The Secretary has rewritten, for clarity, the language in proposed Sec. 674.44(d). By assigning a properly-executed note to the Department, an institution relinquishes all rights and responsibilities for the loan, except as otherwise provided in Sec. 674.50. No further address search is required by the institution.

Section 674.45 Collection procedures.

Comment: Several commenters questioned why the regulations require a telephone contact as a part of the billing process rather than as part of the collection procedures. A few commenters opposed the proposal to delete a requirement of telephone contact as part of the collection process because they saw it as a valuable collection tool to personalize the contact and felt it provided a way to determine the proper course of future action.

Response: No change has been made. Institutions are free to continue to make telephone contacts during the collection process; however, because this can be an effective means of restoring a borrower to current repayment status, the Secretary has determined that this personal contact is necessary during the billing process, before the institution begins more costly collection procedures.

Comment: Many commenters were opposed to the requirement to report borrowers to credit bureaus. These commenters suggested that the only time information on a borrower's account should be reported is at the time of legal action or upon assignment of the note to the United States.

The commenters felt that this proposal could prove very damaging to the student if information is not accurately reported, or if timely reports are not filed immediately upon payment, subjecting the lending institution to liability for damages. A few commenters stated that paperwork and the regulatory burden would be increased. Several commenters believed that no statute authorizes reporting to credit bureaus, and that the Family Educational Rights and Privacy Act of 1974 (Pub. L. 93-579) might preclude disclosure without a student's written consent. Many commenters opposed the reporting to credit bureaus if the costs are not chargeable to the Fund. Commenters stated that this proposal could be costly to institutions-as much as $555 per year/per institution for membership costs.

Response: No change has been made. The Secretary has interpreted the Family Educational Rights and Privacy Act of 1974 and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus could do so only with the consent of the borrower. The Department's experience with this reporting has demonstrated that it is a relatively inexpensive yet effective collection tool. Moreover, the rule has been revised to clarify that the institution is to assess the cost of reporting the debt to a credit bureau against the debtor as with any other collection costs, and that such costs, if not paid by the debtor, can be charged to the Fund.

Comment: Some commenters questioned whether the term "account status" in Sec. 674.45(b)(2) referred to the amount of the outstanding balance as affected by each payment made, or to the account as either outstanding or paid in full. One commenter stated that there is no legal requirement for monthly updating, and that this practice would be burdensome to the school—especially those with manual operations.

Response: A change has been made. The Secretary has expanded Sec. 674.45(b)(2) to require the institution to report any changes in account status according to the reporting procedures of the credit bureaus to which the institution reported the debt.

Comment: Many commenters opposed the Department's proposal that a collection firm be permitted to retain a defaulted borrower's account for only nine months. The commenters felt that the institution should decide the period allowed the firm to collect the account, and believed that nine months was too short a time. The commenters also felt that this restraint will increase regulatory burden. A few other commenters suggested that each loan should be considered separately, and the Department should not hamper the institution's ability to deal with agencies.

Response: A change has been made. The Secretary has extended this period to 12 months to reduce regulatory burden, but based on the extensive experience of the Department with the use of collection agencies on defaulted loans, the Secretary continues to consider a time limit to be an essential incentive to diligent collection action.

Comment: Several commenters recommended that a second effort not be required when it is the judgment of the institution that litigation is appropriate.

Response: A change has been made. An institution may proceed to litigate to collect an account which it has not been able to recover through a first level collection effort through a collection firm, or through use of its own personnel.

Comment: Many commenters noted that the terminology "significantly more intensive effort" as used in Sec. 674.45(c)(1), is not defined. Many of these commenters said it was confusing and that it should be defined or deleted.

Response: A change has been made. The Secretary agrees with the commenters and has deleted this phrase from Sec. 674.45(c)(1).

Section 674.46 Litigation procedures.

Comment: Some commenters expressed concern over the Department's suggestion in the preamble to the proposed rule that institutions pursue litigation by filing a claim in small claims court. These commenters were of the opinion that the filing of a claim in small claims court would be costly and unproductive. Some commenters believed that not all States have small claims courts. A few commenters suggested that the Secretary use the following regulatory language: "use court of appropriate jurisdiction, only when practical for the institution."

Response: No change has been made. When all other efforts fail and the account meets the conditions in Sec. 674.46(a)(1), the institution is required to litigate. The proposed regulations did not require use of any particular kind of court; the use of small claims court is encouraged, but not mandated by regulation.

Comment: Many commenters opposed the proposal to sue the borrower if the outstanding principal and interest on all of the borrower's Perkins Loans held by that institution is more than $200. These commenters felt that it would not be cost-effective to pursue accounts this small, and that the minimum amount should be much higher. The commenters noted that some institutions are required to use State legal services that will not accept for collection accounts with balances under $500; also, the current level of legal fees discourages the pursuit of such small amounts. Other commenters questioned whether it was cost-effective to litigate small accounts as required in the proposed rule, and recommended that the minimum amount of accounts which must be litigated be raised from $200 to $700.

Response: No change has been made. The Secretary continues to believe that the requirement in the proposed rule that institutions litigate those accounts of more than $200 which meet the requirements of Sec. 674.46(a) is a realistic and cost-effective collection criterion. Several factors enter into this analysis of cost-effectiveness. The first of these, although not specifically addressed in the rule, is the deterrent value of an aggressive collection posture demonstrated through predictable resort to litigation. Second, litigation is cost-effective if used only where there is a reasonable prospect that the debtor has assets or earnings sufficient to satisfy a judgment. The proposed rule, like current regulations, requires litigation only in cases in which recovery of the amount owed, including costs, is feasible. Third, litigation is cost-effective to the extent that the costs of litigation are passed along to the borrower sand do not unreasonably negate the value to the Fund of the judgment or unduly tax institutional resources to achieve that judgment.

Litigation costs fall into two categories, for purposes of analysis under the HEA: attorneys fees and collection costs. The latter is not defined is the statute, but logically includes those costs incurred in attempting collection, including court costs such as filing fees, service costs, witness fees, if any, and similar expenses which are not included in the fees charged by attorneys. Regardless of limitations on assessment of such costs under State law, section 484A of the HEA permits the institution to recover these costs, if reasonable, from the debtor. Since these costs are included within the judgment to be taken against a debtor, Sec. 674.46(a)(1)(iii) and (2) require the institution to initiate suit only against a debtor from whom the institution can collect a "major portion" of that judgment debt, including costs. Attorney fees are not commonly understood to fall within the phrase "costs" or "collection costs," and therefore, Federal law does not create a new rule authorizing their recovery, which is usually permitted only where the debtor has agreed to pay them. The Department has included such a provision as an option in the model promissory note published since 1977, and has required litigation on particular categories of accounts since the August 13, 1979 NDSL regulations. Institutions that wished to pass this cost on to the debtor have had ample opportunity to develop promissory notes which included this provision. The Secretary concludes from the Department's program experience that many, if not most, of the institutions participating in the Perkins Loan Program now have these provisions in their notes, and can pass on to the debtor the full cost of attorneys fees incurred to collect the debt. Because the final rule requires the institution to sue only those debtors with resources to satisfy a major portion of judgments which should include the full amount of those very costs which the institution might otherwise have to absorb, for this majority of accounts, litigation of small balance accounts will be cost-effective on those accounts which must be litigated under Sec. 674.46(a)(1) and (2).

The question of cost-effectiveness therefore becomes a real issue only with regard to the collection of those promissory notes which do not authorize the recovery of attorney fees. In those cases, institutions must use either Fund assets or institutional funds, or both, to pay attorney fees. The final rule requires litigation of only those accounts on which the expected cost of litigation, including attorneys fees, does not exceed recovery in the judgment; the minimum amount of such a recovery, under the final rule, is $200. Where attorney fees would exceed recovery in the judgment, litigation is not required; but even where, on small balance accounts, the attorneys fees might consume a substantial part of the recovery, the institution's burden is still quite limited. Under Sec. 674.47(e)(5), the institution may charge against the Fund, attorney fees in an amount up to one-half the judgment, and will therefore be responsible only for fees charged over that limit on these small accounts. The Secretary considers the benefits derived from deterrent effect of litigation sufficient to warrant both the use of the Fund assets for these attorney fees, and the requirement that the institution, where necessary, pay any remainder not chargeable to the Fund. Moreover, as more than one commenter noted, the threat of immediate litigation, when made by counsel, can result in repayments without additional costs, making referral of even these small balance accounts for litigation a cost-effective procedure. Any consideration of the cost-effectiveness of litigating small balance Perkins Loan accounts must recognize that many jurisdictions have small claims courts in which creditors may pursue small balance accounts with or without attorney representations. Many commenters acknowledged extensive and successful use of these courts. The Secretary recognizes that not all jurisdictions have such courts, and that institutions not located in the jurisdiction in which the debtor can be served with process may not be able conveniently and economically to use a small claims court in that jurisdiction. However, the wide availability of this collection tool for many institutions can be reasonably expected to reduce the number of instances in which payment of attorney fees must be made from the Fund or institutional resources.

Comment: Some commenters stated their belief that they would have difficulty securing counsel to litigate small accounts on which the proposed rule would require them to sue.

Response: No change has been made. Lawyers commonly charge for collection litigation on a contingent-fee basis, under which the attorney agrees to be compensated only from amounts received in successful litigation, usually in an amount equal to 30 or 40 percent of the debt received. The Secretary recognizes that an institution may not be able to secure counsel willing to handle a single, or even a few, low balance accounts on a contingent-fee basis at rates similar to those commonly used on larger accounts, but for several reasons does not believe that this warrants changing the rule. First, in those instances in which the institution retains counsel to handle significant numbers of accounts, it should attempt to negotiate a contingent-fee arrangement which commits the law firm to accept referrals of a certain number of small-balance accounts at reasonable fee rates in consideration of the number and size of the other accounts expected to be referred by that institution. Secondly, the rule requires institutions to refer accounts for litigation only where the expected recovery exceeds the costs of litigation. If an institution were unable to secure counsel to litigate a small-balance account under a contingent-fee arrangement, the institution would then determine whether such accounts could be referred on an hourly-rate reimbursement basis. If the institution reasonably determines that the expected cost of litigation, based on estimates of attorney fees on an hourly-rate basis, would exhaust the amount which can be recovered under a judgment, then the institution, under Sec. 674.46(a)(1)(v), is not required to litigate that account. As discussed in an earlier response, this consideration would ordinarily apply mostly to those accounts which are based on notes that do not authorize the assessment of attorney fees against the borrower.

Comment: Several commenters suggested that the reference to referrals in proposed Sec. 674.46(c)(1) should be rewritten as it may be misinterpreted to mean that the Department is reinstating the referral procedures.

Response: No change has been made. As stated in the Preamble, the referral procedure has not been implemented by the Secretary at this time. It remains in the final regulations in Sec. 674.46(d)(2) as an optional activity should the Secretary reinstate it at a later date.

Comment: Two commenters questioned whether proposed Sec. 674.46(c)(2) permitted an institution not to litigate and still assign the note to the United States.

Response: As clarified in Sec. 674.50(a), the final rule requires litigation on an account before assignment in those cases in which litigation would otherwise have been mandated. The institution must follow the procedures set forth

in Secs. 674.41 through 674.46 before assignment of the note to the United States.

Comment: Several commenters suggested that Sec. 674.46(a)(1)(iv) concerning suing the borrower when he or she has a known legal defense be deleted. The commenters stated that it would not be cost-effective for an institution to sue in situations where a known legal defense exists.

Response: A change has been made. The Secretary does not require the institution to initiate suit in those cases in which the institution has good reason to believe that the debtor can establish a meritorious legal or factual defense to the obligation. Where the institution determines that a partial defense may be established, the determinations required in this section regarding the cost of litigation compared to recovery must be based on the amount of the enforceable portion of the obligation.

In some instances, the defense identified may be based on facts over which the institution has no control, such as the expiration of the statute of limitations with regard to a debtor whom the institution has been unable to locate, despite recurring and bona fide attempts, until more than six years after the debtor defaulted. (Note: Pursuant to section 484A of the HEA, institutions are now entitled to at least a six-year limitation period within which to bring suit against a Perkins Loan or NDSL defaulter, regardless of any State law which would establish a shorter period; State law may, however, provide for periods greater than six years. This provision assures that at least a Federal minimum applies to all NDSLs and Perkins Loans, including those made before the date on which section 484A was enacted.)

In other cases, the institution may be responsible for the defense available to the borrower; for example, when the other conditions of Sec. 674.46(a) are met, but the period of limitation has run with regard to a loan which the institution has not attempted suit in a timely manner, the Secretary does not require the institution to attempt litigation. However, in such cases, the institution has failed to enforce properly an obligation which it was responsible to collect. The Secretary considers the institution liable for the loss caused to the Fund by that or any other action or omission which bars the institution from securing a judgment for the full amount outstanding on a loan which met the other conditions in Sec. 674.46(a). The institution is similarly liable for losses caused to the Fund by acts or omissions in the past that prevent successful litigation at present; for example, an institution that did not sue a defaulter is liable for the loss to the Fund on that loan if the debtor later leaves the State and cannot be located unless the institution demonstrates that when the debtor was able to be served with process, litigation would not have been successful, and therefore, that it was not then required to litigate the account.

Comment: Two commenters suggested that institutions not sue for small amounts but be allowed to use an offset of Federal income tax refunds by the Internal Revenue Service.

Response: No change has been made. The tax refund offset program is presently authorized only through 1987, and Congress has not yet taken any action to extend this program. In addition, under 31 U.S.C. 3720A, only Federal agencies may refer debts to the IRS for collection by offset; as presently interpreted, the statute permits such referrals only after Perkins Loan notes have been assigned to the United States.

Section 674.47 Costs chargeable to the Fund

Comment: Several commenters requested more clarification on the word "actual" as used in Sec. 674.47(a)(1)(ii). They cite great difficulty in individualizing borrowers' accounts in this process.

Response: A change has been made. As explained in Sec. 674.43(b)(3) and 674.45(e)(2), the institution may assess late charges and collection costs based on either the actual costs of actions taken on the particular account, or on average costs. Therefore, individualized recordkeeping is not necessarily required, but documentation must be retained to support the determination in either case.

Comment: Many commenters were opposed to institutions being limited to charging the Fund an amount not to exceed $25 for each successful address search for a borrower. The commenters believed that instead of an amount being cited in the regulations, the regulations should say "reasonable." A few of these commenters were opposed to using the word "successful" on grounds of not knowing whether an address search would be successful or unsuccessful until the search is completed. These same commenter felt that costs for unsuccessful searches should also be chargeable to the Fund.

Response: A change has been made. Based on comments received, the Secretary has decided that an institution may charge the Fund a "reasonable amount" for each successful address search rather than the proposed $25. It is not the Secretary's intention to mandate the kind of skip-tracing service an institution can employ, or to limit the kind of compensation arrangement reached between the services and the institutions. The institution may limit its costs by using a contingent fee agreement with the contractor.

Comment: A number of commenters opposed the requirement to assess collection costs against the borrower. Many of these commenters recommended that assessment of collection costs be an option of the institution to use as a negotiating tool. Other commenters opposed this rule, citing a possible conflict with the Fair Debt Collection Practices Act (Pub. L. 95-109), State laws prohibiting this practice, potential negative public relations with alumni, and conflicting language in the promissory note.

Response: A change has been made. The Secretary continues to believe that, to the extent possible, the institution should shift the burden of collection costs from the institution and from the taxpayer to the defaulting borrower. However, the Secretary agrees with the commenters' argument that the ability to waive some or all collection costs is a valuable collection tool, and he has modified the rule to comply with this comment. Under Sec. 674.47(d), the institution may waive collection from the borrower of the same percentage of the accrued collection costs as that percentage of the outstanding balance then due on the account that the debtor repays within thirty days of the date the debtor enters into a repayment agreement with the institution. Thus, if the debtor and the institution reach a written repayment agreement, and the debtor repays one-half of the outstanding principal and interest balance then due on as delinquent or defaulted loan within thirty days of the date of that agreement, the institution may waive the collection of one-half of the collection costs

that have accrued on the account through the date of that payment; payment in full can permit a full waiver of collection costs. To the extent that these accrued costs have been waived under this rule, the institution may charge them against the Fund, subject to the limitations otherwise applicable under Sec. 674.47.

The Secretary recognizes that some promissory notes may not include language regarding the assessment of collection costs. As discussed in an earlier comment, the omission of such a provision does not prevent the institution from assessing such costs because the imposition of these costs, unlike attorney fees, is authorized by section 484A of the HEA, as added by section 16033 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), for all loans. The Secretary has revised the language of the suggested promissory note to clarify that the borrower is liable for collection costs.

Although some commenters cited adverse alumni reaction as a reason for not assessing collection costs, it is not at all clear why this factor deserves serious consideration. Whether the alumni approve this collection practice is at this point no longer a controlling consideration; by accepting a fiduciary responsibility over these Perkins Loan funds, the institution bound itself to pursue enforcement of these debts without regard to whether such action may at times impair its own self-interest. Moreover, the rule has been revised to permit waiver of collection costs for those alumni who demonstrate a good-faith effective effort to cure a past default.

As previously noted, section 484A of the HEA authorizes the institution to assess collection costs against the borrower without regard to the provisions of State law. This assessment of collection cost against the borrower does not conflict with requirements of the Fair Debt Collection Practices Act (FDCPA) as suggested by a commenter. Section 808 of the FDCPA prohibits a third-party collecting a debt on behalf of a creditor from collecting any charges or expense incidental to the principal obligation unless expressly authorized by the original agreement or permitted by law. 15 U.S.C. 1692f(1). Because section 484A of the HEA now specifically authorizes assessment of collection costs, a debt collector can attempt to collect them as permitted by law.

Comment: Many commenters opposed the proposal to limit the costs chargeable to the Fund to "successful" collection efforts. The commenters noted that they would not be able to distinguish successful from unsuccessful until after collection efforts were completed, and therefore the same expenses would have been incurred in either case.

Response: A change has been made, but the basic principle has been retained. As noted earlier, where the regulations mandate specific actions with fixed costs, such as telephone contacts (Sec. 674.43(f)), credit bureau reporting (Sec. 674.45(a)(1)), and opposing relief in bankruptcy (Sec. 674.49) on all accounts, Sec. 674.47(a) and (b) permit the institution to charge these costs, if not paid by the debtor, to the Fund without regard to whether they were "successful"; or not. The other costs incurred after the billing cycle, such as costs of address searches (Sec. 674.44(b)), collection action (Secs. 574.45(a)(2) and 674.45(c)(1)(ii)), and litigation (Sec. 674.46) can typically be obtained by the institution on a contingent-fee basis: the institution incurs no cost unless the service is successful. The Secretary therefore considers it reasonable to permit the institution to charge these latter costs to the Fund only when they are successful. Sec. 674.47(e)(1), (3), (4), (5), and (6). If the institution provides these services in-house or on a non-contingent basis, it need only apportion these costs between successful and unsuccessful attempts in a reasonable and documented manner.

Comment: Many commenters objected to proposed Sec. 674.47(c)(3) which provided that an amount not to exceed 50 percent would be charged against the Fund for second collection efforts. One commenter was of the opinion that 50 percent was excessive and 33 1/3 percent as used in first collection efforts would be more appropriate. Other commenters believed that the establishment of two different percentage rates was counterproductive. They felt that the higher allowance for second efforts would encourage collectors to work less in the first time effort for a higher profit margin in the second. They urged that the 50 percent rate be used for both.

Response: No change has been made. The rule requires the institution generally to use different parties for first and second collection efforts, thereby reducing the possibility of allowing accounts to slip from first to second levels of efforts. The Secretary intends to consider the need for a 50 percent allowance for second effort in the near future, and after further consideration and public comment, may reduce that level.

Comment: Several commenters were opposed to the wording of proposed Sec. 674.47(c)(4), which the commenters stated would have permitted the institution to charge the Fund only for the salary of an institutional employee performing collection functions. These commenters believed that fringe benefits, a portion of office space and equipment, and other related employment costs should also be chargeable against the Fund.

Response: A change has been made. The Secretary's intent was not to exclude cost categories from the expenses that an institution could charge to the Fund if it performed its own collections, but to give an example of permissible charges. An institution may include in the costs to be charged against the borrower, and, if not paid by the borrower, against the Fund, any expense reasonably incurred in carrying out the activities described in Sec. 674.47(b), including both direct and indirect costs properly allocated to these activities.

Comment: Many commenters objected to the limitations on litigation costs that could be charged to the Fund under proposed Sec. 674.47(d)(2). The commenters approved a limitation on such costs, but believed a higher limit than $2,000 or one-third of the amount of any judgment obtained was necessary.

Response: A change has been made. The Secretary believes that a higher limit may be warranted; and has therefore increased the amount of litigation costs that can be charged to the Fund to an amount not to exceed 50 percent of the amount of any judgment obtained. Sec. 674.47(e)(5). This increase is intended to provide institutions a level commensurate with their new burden of litigating smaller balance accounts, and enable them to negotiate referrals of groups of accounts of varying sizes for litigation. The Secretary intends to review the affect of this level on program costs and recoveries, and may propose to reduce that level in the future.

Comment: A number of commenters opposed Sec. 674.47(e) of the proposed rule regarding write-offs. Some commenters felt that $200 was too high and students would not pay the last $200 owed if the rule allowed that amount to be written-off. One commenter asked where any money collected after the write-off procedure would be deposited. A few commenters recommended a smaller write-off figure with no strings attached. Other commenters questioned the value of the write-off procedure if continued collection efforts were required; they recommended deleting these requirements in the proposed rule,

Response: A change has been made. Under Sec. 674.47(g) of this final rule, the amount which may be written off remains at $200 or less. Under the final rule, the institution must exhaust the due diligence procedures prescribed in these rules, which include not only a sequence of contacts immediately after default, but semi-annual attempts to locate "skips," annual dunning contacts, and annual evaluation of accounts for litigation until litigation to collect the account would be barred by the statute of limitations, now six years, unless State law provides a longer period. 20 U.S.C. 1091a(a). The Secretary believes that it is not cost-effective to require collection efforts beyond that point, and write-off is then reasonable for small balances. For larger balances, the institution is urged to consider assignment to the Department for further enforcement action.

Section 674.48 Use of contractors to perform billing and collection or other program activities.

Comment: Many commenters opposed Sec. 674.48(c)(1) of the proposed rule which would require that any billing or collection firm under contract by an institution to collect Perkins Loans be bonded in an amount covering the amount of collections on loans expected to be in its control for a two-month period of time. The commenters stated that most billing firms work in conjunction with financial institutions-with accounts set up in the name of the institution using their services for billing. The commenters believed that it is unnecessary to ask a billing firm to be bonded when it does not handle money nor have signatory powers on the account. Several other commenters questioned why the Department is requiring a bond and at the same time requiring that funds be deposited in an institutional trust account or lock-box.

Several commenters suggested that the bond should be a "performance bond," while other commenters requested guidance as to how an institution would verify the existence of a bond and what types of bonds should be provided. Three commenters stated the bond should cover the amount of all portfolios a firm is handling.

Many commenters opposed the proposed rule as financially burdensome because they would have to get bonding agents to increase the amount of their bonds. Two commenters opposed the bonding proposal if the institution uses a law firm to collect because of the extensive insurance coverage they already maintain to protect their clients.

Response: A change has been made. Section 674.48 has been revised to clarify the requirement that an institution retain only bonded billing services and collection firms to carry out billing and collection procedures. Section 668.15 of the title IV General Provisions regulations requires that an institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the title IV funds it receives as a trustee. A fidelity bond, or similar insurance, indemnifies the holder or beneficiary against losses resulting from the fraud or defalcation of an individual. The Secretary believes that it is reasonable to require the institution to assure the same sort of protection for the Federal and institutional interest from third parties who handle its loan accounts as it is required to provide with regard to its own employees.

The Secretary believes that reasonable people exercising normal prudence in the administration of their financial affairs would require a third party to demonstrate adequate fidelity bond protection before entrusting that party with duties which might permit embezzlement of their funds. Third parties engaged in student loan collection in the past have embezzled funds repaid by borrowers, and there can be no assurance that the firm retained by the institution will continue in business after a misappropriation by its employees, so that the institution could recover for its loss from assets of the firm. Indeed, history suggests that the contrary will be true. An institution which allows a third party to handle its loan accounts without satisfying itself that a financially responsible surety will indemnify it in the event of loss is therefore negligent in the performance of its duties as trustee of the Fund.

A fidelity bond adequately protects the institution only if it provides coverage in an amount sufficient to indemnify the institution for the full amount of any misappropriation of funds belonging to the institution.

To respond to those commenters who believed that collection firms should be permitted to deduct their fees, while at the same time assuring minimum adequate bonding coverage, the Secretary has revised the proposed rule with regard to bonding requirements for third-party collectors to provide two alternative methods of assuring adequate coverage. First, if the institution does not authorize the third party to deduct its fees, but requires it either to deposit payments in an institutional trust account or to direct payments to the institution itself or to a lock-box, Sec. 674.48(f)(2) of the final rule provides that the institution may meet its duty of care if it assures itself that the billing or collection firm is bonded in an amount equal to two months' expected repayments on referred accounts.

Second, the final rule provides that if the third party collector is authorized to receive payments and deduct its fees from the receipts, the institution must more actively undertake to assure the protection. If the amount of expected receipts is very large, over $100,000 over a two-month period, the institution has substantial exposure, and must assure itself that it will not have to compete with other clients for a share of a common bond by ensuring that it is the named beneficiary on a bond or policy in the full amount of those repayments. Section 674.48(f)(3)(ii). If the amount of expected receipts is less than $100,000, the institution must still make a reasonable effort to assure itself that the bond coverage will protect its interest. It can do so by assuring itself that the collector is bonded in an amount ten times larger than the amount of repayments expected to be generated in a two-month period on accounts the institution itself refers to the agent, a multiple designed to provide some protection from the effects of competing claims. Section 674.48(f)(3)(i)(A). The institution should be able to satisfy this requirement with a minimum of investigation. If this multiple, on the other hand, exceeds the amount the collector will be receiving during the two-month period for all its clients, and

demonstrates that to the satisfaction of the institution, the final rule provides that a smaller bond is reasonable. Section 674.48(f)(3)(i)(B). It must be emphasized that these particular bonding requirements apply only in those instances in which the institution permits the third party to pay itself out of receipts on the loan accounts, and therefore only apply to contracts with collection firms.

An institution that engages a law firm to perform collection services on its accounts (other than actual collection litigation) must assure itself of this protection in the same manner as with any other third-party, by reviewing the bond or insurance policy to determine whether it protects against misappropriations by employees of the firm. Where a law firm's malpractice insurance also indemnifies for misappropriation of funds by any of the employees of the firm in the course of collection activity, such a policy would provide coverage comparable to that of a fidelity bond.

Comment: A number of commenters opposed the provision in proposed Sec. 674.48 (c)(2) and (d)(4) that would require institutions to use billing services and collection firms that provide monthly statements to institutions to show activities with regard to each borrower. Some commenters stated that the proposed requirements are unnecessarily burdensome due to lack of personnel to review statements, and a costly duplication of effort because institutions already receive information regarding the borrower's status from various other reports. Several commenters suggested that the proposal be dropped due to increased programming costs which the commenters believed would be very high. All of these commenters opposed the requirement that the monthly statements from billing and collection firms should include amounts applied to principal, interest, and late charges. The commenters stated that the requirement is redundant due to the fact that this information is already kept by the institution in its accounting system.

Several commenters stated that collection firms should be required to furnish the information listed in proposed Sec. 674.48(d)(4) of this section, only upon the close and return of the account to the institution. A few commenters suggested that the regulations require quarterly statements which show only payments and commissions charged.

Response: A change has been made. The Secretary agrees with the commenters that some of the information required is available to the institution through various other reports. Therefore, many of the items previously listed in Sec. 674.48 (c)(2) and (d)(4) have been deleted; these provisions now require an institution that uses a billing service or a collection firm to secure from these contractors a quarterly statement instead of a monthly statement as proposed in the NPRM.

Comment: Many commenters objected to Sec. 674.48 (c)(5)(i) and (d)(3)(i) of the proposed rules which gave the institution an option to use billing services and collection firms that instruct the borrower to pay the institution directly. The commenters suggested the requirement be deleted or reworded as follows: "* * * instructs the borrower to make checks payable to the institution, but remit to the service or firm." Several commenters stated that it is a responsibility of a billing service and collection firm to receive payments. The commenters also expressed the concern that this requirement would delay the communicating of account activities and result in inaccurate information.

Response: No change has been made. The institution is primarily responsible for Perkins Loan funds, and the Secretary sees no reason to bar the institution, if it chooses, from receiving payments directly from the borrower. Therefore, this will remain as an institutional option. Sec. 674.48 (c)(4)(i) and (d)(1)(i).

Comment: Many commenters disagreed with proposed Sec. 674.48(d)(3)(ii) and (iii) which would require a collection firm to deposit funds collected from the borrower in a lock-box or institutional trust account. The commenters stated that in most States, collection firms are licensed and bonded, and are required by law to pay clients on a regular monthly basis. The commenters also stated that by State law, funds are supposed to be kept in an agency client trust fund. Several commenters believed that this proposal would require more bookkeeping for the institutions and agencies and establishment of additional bank accounts. Other commenters stated that it would be costly because of monthly box rental fees. Some of these commenters stated that this proposal will not provide any additional protection against unlawful use of loan funds beyond that already provided by bonding requirements.

Response: No change has been made. The Secretary believes that the proposed provisions best satisfy the Secretary's goals of protecting the Federal Government's interest in the title IV funds. It is difficult to see any basis for concluding that loan repayments commingled in a single client trust fund would be protected in the event of either embezzlement or insolvency by the firm as fully as if they had been promptly deposited in an institutional trust account, after deduction of the firm's commissions. Therefore, if an institution chooses not to use a collection firm that instructs the borrower to pay the institution directly, it must employ one that deposits those funds in a lock-box or institutional trust account.

Comment: Many commenters objected to requiring an institution to ensure that a collection firm does not deduct its fees from the amount it receives from the borrower. The commenters suggested that the Secretary allow such a firm to retain its commission before remitting payment to the institution provided that borrowers' accounts are credited. The commenters believed that firms would be forced to extend credit to their clients—creating paperwork and expense. A number of these commenters also noted that attorneys usually deduct their fees from the payment. The commenters suggested that this proposal be deleted and that the institution be allowed to use its discretion in establishing mutual agreements with the collection firms. They believed that this proposal offered no additional protection against abuse. The commenters stated that the additional institutional workload to audit collection firms, to process invoices and payments, and the adversarial relationships between institutions and collection firms which, they felt, would be created by this proposal, would not make this requirement cost-effective.

Response: A change has been made. The Secretary agrees with the commenters that the proposed requirement may not be cost-effective and this provision has been deleted.

Comment: Numerous commenters responded to the Secretary's invitation to comment on whether or not the prohibition against an institution using a commonly owned billing service and collection firm should be revoked. These commenters believed that allowing the use of commonly

owned services would present a conflict of interest. The commenters stated that revoking this prohibition would make it more advantageous for a company to pursue an account after default, when the percentage of return would be greater. Some commenters believed that smaller firms collect more aggressively and are more sensitive to institutional needs and that removing the prohibition would enable large firms to underbid them and monopolize the provision of these services, to the ultimate detriment of the institutions and the loan program. Several commenters expressed concern that an environment for misuse would be created and the system of checks and balances would be eliminated. The commenters believed that deleting this requirement would also increase the per-dollar cost of collections, and therefore, they recommended that the regulation not be revoked.

However, a smaller number of commenters responded favorably to revoking the provision that prohibits an institution from using a collection firm and billing service that are commonly owned. These commenters provided the following reasons as to why this provision should be revoked: (1) Allowing institutions to use collection firms and billing services that are commonly owned may improve communications, thus improving the efficiency of the billing/collection process; (2) The prohibition may stifle and prohibit the establishment of consortium agreements which can be an effective means of performing collection efforts; (3) There may be a reduction in operating costs to institutions because it would eliminate the paperwork of sending accounts from billing to collection firms; (4) There would be consistency between the Perkins Loan and Guaranteed Student Loan programs; and (5) Maintaining the regulation may prohibit normal effective operations and restrain trade.

Response: No change has been made. The Secretary appreciates the comments received regarding the provision which prohibits institutions from contracting with commonly owned billing services and collection firms. After considering the comments, the Secretary agrees with the majority of the commenters that the checks and balances which this prohibition provides are necessary to protect the Fund, and therefore does not believe that revoking this prohibition is prudent at this time.

Comment: Several commenters responded to the Secretary's invitation to comment on whether a provision should be added to require an institution that contracts with a single firm or with commonly owned firms to perform both billing and collecting to obtain biennial audits of the Perkins Loan accounts of the firm(s). All of these commenters opposed this provision and stated that audits should only be conducted when and if the school needs them.

Response: The Secretary appreciates the comments and does not include such a provision in the regulation. In view of the bonding requirement for billing services and collection firms, the Secretary no longer believes that the provision regarding biennial audits of these firms is necessary. However, the Secretary considers periodic auditing of the institution's accounts held by a firm to be a desirable practice.

Comment: Several commenters suggested that defaulted amounts should be subject to offset of Federal income tax refunds by the Internal Revenue Service.

Response: No change has been made. The Internal Revenue Service, on behalf of any Federal agency, if authorized by the Spending Reduction Act of 1984 (Pub. L. 98-369, Section 2653, 98 Stat. 1153) to offset Federal income tax refunds of taxpayers who owe debts to the United States. 26 U.S.C. 6402(d). Because loan debts are not regarded as owed to a Federal agency until assigned to the Department of Education, the Secretary has no basis for requesting an offset for such debts against a borrower's Federal income tax refund. Moreover, this authority now extends only to offsets of refunds payable before December 31, 1987.

Section 674.49 Bankruptcy of borrower.

Comment: Several commenters objected to both perceived and real requirements in the proposed rule regarding institutional responsibilities with regard to borrower bankruptcies as being overly burdensome and costly in light of costs of litigation and the expected recovery, and urged that greater reliance be placed on institutional discretion in selection of enforcement actions on such loans.

Response: The regulations require the institution to exercise due diligence in attempting to enforce a loan owed by a borrower who has filed for relief in bankruptcy. Generally speaking, they do not require the institution to do more than it would otherwise be required to do in the context of any other litigation, nor less than the institution is already required to do under bankruptcy law. For example, the regulations require the institution, upon notification of the filing of a bankruptcy petition, to suspend collection action outside the bankruptcy proceeding, and require the institution, at a minimum, to prepare and file a proof of claim, an extremely inexpensive and simple step in the collection process. The regulations, on the other hand, require the institution, as a trustee of the Fund, to consider carefully the various enforcement actions that other prudent creditors would take to protect their claims against a debtor in bankruptcy, and to take those actions which are legally authorized and which are not expected to cost more than the size of the loan and the future recovery from the debtor can justify.

Institutions differ greatly in their experience with loan collection in general and with bankruptcy in particular; institutions likewise differ in their commitment to aggressive loan collection. In light of these differences and the substantial Federal interest at stake in this matter, it is entirely appropriate for the Department to provide in these rules specific guidance and minimum standards for the exercise of due diligence in the context of student loan bankruptcies, rather than leaving the choice of actions to the discretion of each institution.

The Department recognizes that realistic consideration of costs of litigation must be made with regard to each step in the handling of student loan bankruptcies, and the final regulations require the institution to make a reasonable estimate of the cost-effectiveness of an enforcement action with regard to a debtor in bankruptcy before it expends Fund and institutional assets on such litigation.

Comment: Several commenters believed that the proposed rule would require the institution routinely to file a complaint to have a loan in repayment less than five years from the filing of the petition determined to be nondischargeable, and objected that the law does not require this action in order to preserve the enforceability of the loan obligation.

Response: Clearly, the statute places the burden of securing a determination of dischargeability on the debtor for those loans falling under 11 U.S.C. 523(a)(8)(A), and the institution need not initiate the consideration of that issue by filing a complaint to have the loan determined to be nondischargeable. Neither the proposed rule nor the final rule requires the institution to file such a complaint in every case involving a nondischargeable loan. Consistent with the consideration of litigation costs discussed earlier, Sec. 675.47(e)(5)(i) and (ii) permit the institution to charge actual costs to the Fund if it chooses to contest aggressively the discharge of a loan under circumstances in which the Department considers such action likely to prove cost-effective, and a contingent amount in other circumstances. The institution that chooses to file a complaint for a determination of nondischargeability under circumstances described in Sec. 674.49(c)(3), (4), and (5) may charge the actual amount of litigation costs to the Fund. In all other cases, the institution may charge the fund only those costs not to exceed one-third of the amount of any judgment obtained by that action.

Comment: Several commenters objected to the requirement in the proposed rule that an institution include in its pleadings a request for judgment on the amount owed by the debtor in those instances in which the school files a complaint to have a loan obligation determined to be nondischargeable, or opposes a complaint seeking to have the loan held to be dischargeable. The commenters believed that such an action was not appropriate in a bankruptcy proceeding.

Response: No change has been made. Because the bankruptcy court has jurisdiction to adjudicate cases arising in or related to cases under the Bankruptcy Code, the court appears to have the power to issue an order determining the amount owed on a debt included in the bankruptcy proceeding. Moreover, the practical benefits of securing a judgment on the debt in the bankruptcy proceeding are obvious: first, the institution at this time definitely knows the location of the debtor, who either before or after the bankruptcy may be difficult to trace; second, the judgment tolls the running of the statute of limitations on the debt; and third, the action increases the likelihood that the debtor will enter into a reaffirmation agreement regarding the loan obligation, and make such an agreement, which would be incorporated in a consent judgment, more valuable to the institution after the bankruptcy is closed. Therefore, this requirement states what constitutes a good collection practice and has been retained in Sec. 674.49(c)(5)(ii).

Comment: Some commenters believed that the institution should not be required in every Chapter 13 proceeding to seek to have the plan extended to the full five years authorized under the Code, but should be permitted to seek this extension before those courts which appear receptive to such a proposal.

Response: The comment is well taken, and this requirement has been deleted from the final rule; institutions are urged to consider this action on a case by case basis.

Comment: One commenter believed that the regulations were perhaps excessively detailed regarding the institution's responsibilities with regard to claims of undue hardship, but silent on other grounds for excepting loans from discharge, such as borrower misrepresentation of financial status, and suggested that the institution be counseled to consider weighing the cost of attempting to oppose discharge on other grounds against the likely recovery.

Response: The Department recognizes that in most instances the institution will lack the information needed to establish that a loan should be excepted from discharge under the false representations and fraud provisions of 11 U.S.C. 523(a)(2) and (4), and therefore does not require the institution to undertake an investigation that might establish that the loan should not be discharged for such fraud. On the other hand, the institution as a trustee of the Fund has a responsibility to exercise diligence in attempting to collect these loans as assets of the trust, and cannot ignore information it has in its possession that might establish that the student loan debtor obtained the loan by means of false pretenses or a false statement of his or her financial condition. Where the institution has information that shows that the debtor made such false statements, its general fiduciary responsibility for collection litigation requires it to protest the discharge on that ground where there is some likelihood that the debt can be recovered from the debtor. 34 CFR 674.46(a)(1), (2). The costs of such litigation, to the extent not recovered from the debtor, can be charged to the Fund under Sec. 674.47(e)(5)(ii).

Comment: One commenter pointed out that the institution should not be required to oppose a discharge if a Chapter 13 debtor is unable to complete the payments required under the previously approved plan and seeks a discharge under 11 U.S.C. 1328(b), as proposed earlier, because such a discharge, if granted, affects only loans dischargeable under the terms of 11 U.S.C. 523(a)(8). By not opposing such a request, the institution ensures that a debtor who might have been able to discharge his or her obligation without regard to the five-year, undue hardship rule in 523(a)(8) must now meet that test in order to have the loan discharged.

Response: The comment is well taken, and the final rule has been revised to require the institution, rather than opposing a discharge requested under 11 U.S.C. 1328(b), to act only where that action can potentially protest the future enforceability of the loan and is not disproportionately costly. Thus, the institution should monitor the debtor's performance under the Chapter 13 plan, and identify failure by the debtor to make the payments required under that plan. Where the institution finds repeated failures to make required payments, it should anticipate that the debtor will seek a "hardship discharge" under 11 U.S.C. 1328(b). Such a discharge, if granted, will discharge loans which entered repayment more than five years before the filing of the petition. If the institution holds a nondischargeable loan, it need take no action at this point; however, if the institution holds a dischargeable loan, it must then review the cost and likelihood of success of either moving to dismiss the case in order to preempt the expected request for a "hardship discharge," or waiting for, and opposing, that request. The institution must review its own records and pertinent court records to evaluate whether, under applicable provisions of bankruptcy law, the facts in the case support a move to dismiss the case, or an objection to the requested "hardship discharge," and further, whether the amount the institution will spend, with the amounts already spent in litigating this particular bankruptcy, exceed one-third of the amount of the loan debt that will be lost if the discharge is granted. In the case of larger, dischargeable loans and low-divided plans, the Department expects that opposition by the institution will be cost-effective, and in

those cases, aggressive opposition by the institution is a necessary element of its due diligence responsibilities.

Section 674.50 Assignment of defaulted notes to the United States.

Comment: Several commenters felt that Sec. 674.50(a)(1) of the proposed rule, which would have required that a note be in default for two years before it could be assigned to the United States, was too restrictive. They stated that institutions should have an option of assigning a note to the United States at any time after due diligence procedures have been performed.

One commenter stated that the provision for assigning notes should be deleted from the regulations because the procedures may be a disincentive for schools to do a good collections job.

Response: A change has been made. The Consolidated Omnibus Budget Reconciliation Act of 1985 eliminated the requirement that a loan must be in default for two years before an institution may assign it to the United States. In accordance with this Act, Sec. 674.50(a)(1), as proposed in the NPRM, has been deleted. An institution may assign a defaulted loan to the United States if that institution has been unable to collect a payment after following the due diligence procedures through a first collection effort, and if litigation is required under these rules, through entry of a judgment. The assignment process is not intended as a disincentive for loan collections, but is available only if a loan cannot be collected after institutional collection efforts have been exhausted.

Comment: Many commenters expressed concern with Sec. 674.50(a)(3) of the proposed rule which permits an institution to assign to the Secretary only those accounts greater than $200. They felt that this may be a problem for two-year institutions and that the minimum amount should be reduced to $100. Some of these commenters stated that they would support this proposal if Sec. 674.47, "Costs chargeable to the Fund," allows institutions to cancel, forgive and cease to pursue accounts valued at $200 or less. Other commenters questioned how the accounting would be handled for accounts of $200 or less. One commenter stated that the account balance to be assigned should be no less than $500. One commenter stated that no dollar minimum should be placed on assigned accounts.

Response: No change has been made. The purpose of the provisions in the statute for assignment to the Secretary is to permit the Federal Government to use its resources to enforce the loan. Based on its experience with its current portfolio the Department considers an account balance of $200 to represent the minimum account size to be handled effectively. The Secretary is including a provision in Sec. 674.47 for the write-off of account balances of $200 or less. Accounts that are written off should be handled according to normal institutional accounting procedures; however, if a payment is made on an account after the account has been written off, the payment must be deposited into the Fund.

Comment: Several commenters stated that the documentation requirements in proposed Sec. 674.50(c) were excessive, particularly for institutions with default rates of 10.0 percent or less, and should be eliminated.

Response: A change has been made. The Secretary has clarified the regulation in Sec. 674.50(c) to state explicitly that all institutions must certify in writing that due diligence required under Subpart C has been exercised on each loan submitted for assignment, but that documentation supporting institutional compliance with all of the due diligence requirements need not be submitted if the institution has a default rate of 7.5 percent or less as of June 30 of the second year preceding the submission period.

Comment: A few commenters stated that the regulations should not require submission of the "original promissory note" as part of the assignment procedure, since originals are sometimes lost in the process of litigation. The commenters proposed that the regulations should state "certified original copy" of the promissory note.

Response: A change has been made. The Secretary concurs with the commenters. The words "or certified copy of the original note," have been added to Sec. 674.50(c)(2).

Comment: One commenter opposed the requirements in proposed Sec. 674.50(c)(5) that copies of all approved requests for deferment and cancellation must be submitted with notes submitted for assignment. The commenter believes that this proposal is neither feasible nor cost-effective.

Response: No change has been made. In collecting assigned loans, the Department frequently encounters disputes about alleged deferments. Adequate documentation regarding all such requests is therefore essential to the Government's collection action in these accounts.

Comment: One commenter stated that proposed Sec. 674.50(c)(7), requiring documentation that the institution has withdrawn the account from any firm that it employed for address search, billing, and collection or litigation services, would be an unnecessary burden on institutions.

Response: No change has been made. In the experience of the Department, a failure by the institution to recall assigned accounts from its collection firms causes confusion for the debtor and the Department and requires a considerable amount of time and effort by the Department to correct. These problems justify imposing on institutions the added step of documenting that they have in fact done what they were required to do upon relinquishing their interest in the note to the United States.

Comment: One commenter stated that a Chapter 7 discharge or a Chapter 13 hardship discharge has no effect on a loan which is within the five-year period, and suggested that proposed Sec. 674.50(d)(1) should clarify that no entry of judgment is required if the loan is expected from discharge under 11 U.S.C. 523(a)(8), and should permit assignment of this kind of loan if litigation would not otherwise be required under these rules.

Response: No change has been made. The rule requires the institution to secure either a judgment and a determination by the bankruptcy court that the loan to be assigned is nondischargeable, or a judgment on the loan obligation after entry of a general discharge order, not merely to secure an interpretation of the effect of a general discharge order on a student loan, but to make enforcement of such loans in the hands of the Government more cost-effective. The purpose of the assignment provisions of the statute is to

enable the Department to recover the Federal investment in assigned, defaulted loans.

No reasonable prospect of recovery exists on a loan discharged in bankruptcy, and recovery on loans which are dischargeable on a showing of undue hardship can be expected to involve costs beyond those typically encountered in enforcing other defaulted loans. It is reasonable to expect that borrowers owing a dischargeable loan assigned to the Government will respond to a Federal demand for payment not only by asserting the defenses they might assert on the loan itself, but also by seeking to reopen their bankruptcy proceeding and demonstrate undue hardship. The institution should reasonably be expected to meet those costs under circumstances described in the final rule in order to sustain its own Fund and to establish a credible deterrent to ready recourse by its borrowers to relief in bankruptcy. The Federal Government, which has already supported the institution's collection costs, accepts assignments in order to generate revenues. It is not cost-effective for it to spend the additional time and staff resources needed to deal with these bankruptcy-related challenges in order to recover on this particular category of assigned loans. In order to assure that enforcement of loans included in a previous bankruptcy case will not be disproportionately more costly than collection of other assigned loans, it is reasonable to accept only those loans for which the institution, which currently derives financial benefit from the assignment in the form of a reduced default rate, to secure either a judicial determination of enforceability of the loan from the bankruptcy court, or from another court in which the borrower had the opportunity to assert the defense of a discharge in bankruptcy, but failed to do so.

Comment: A few commenters suggested that proposed Sec. 674.50(d)(2) be amended to permit assignment following unsuccessful efforts by an institution to collect in the courts. The commenters expressed the belief that this proposed provision will discourage institutions from litigating difficult cases.

Response: This provision is now found in Sec. 674.50(e)(2); no other change has been made. For the same reasons that make a judicial determination of enforceability a reasonable condition for assignment of a loan owed by a borrower who has resorted to bankruptcy, a judgment is a reasonable prerequisite for assignment of those loans which should be litigated as an element in the performance of the institution's due diligence responsibilities. The commenter, moreover, has identified precisely those loans on which this requirement is most reasonably imposed. Except with regard to claims of the defense of infancy, to which a variety of rejoinders are almost always available, in this Department's considerable experience in attempting collection on hundreds of thousands of assigned student loans, the cases described in the comment as difficult cases are difficult because of some action or inaction by the institution which the borrower claims to have caused injury and to bar enforcement of the loan obligation. It is difficult for the Government to respond to such charges, since the information needed to sustain or dispute the charges is solely in the hands of the assigning institution, which, for any of a number of reasons, may not provide the information to the Department as needed to rebut effectively the defense and recover on the loan. Not only does the Department typically lack the information needed to respond to borrower defenses, but it is hardly fair for the institution to derive the benefits now available from the assignment while the Department bears the expense and litigative risk in pursuing the borrower on these loans.

Comment: Several commenters believed that proposed Sec. 674.50(f), which would require an institution to indemnify the Fund for any note found to be unenforceable after assignment, was unnecessary and vague and should be eliminated. One commenter believed that the term "indemnify" legally means that some type of insurance must be provided in case the note is not a legally binding instrument, and that the statute does not require an institution to purchase insurance. One commenter believed that State laws which provide that no officer or agency of the State may contract any indebtedness on behalf of the State or assume to bind the State in an amount in excess of the amounts appropriated by the legislature unless expressly authorized by law, prevented compliance with the indemnification requirements in the proposed rule.

Two commenters believed this requirement was unfair unless, in the event that an assigned account is found at a later date to lack needed documentation, the Department were to provide, at the request of an institution, a second review of the loan account and the institution's performance of due diligence before making a final determination.

One commenter questioned the unilateral determination of unenforceability in proposed paragraph (f). The commenter questioned the definition of "legally unenforceable" and asked whether an account is considered to be "legally unenforceable" when the statute of limitations has expired but when the account is still considered by the institution to be a viable obligation which may be collected through such nonjudicial remedies as offset and withholding of services.

Response: No substantive change has been made. The provision that the Secretary may determine, with or without a judicial determination, that an assigned loan is not legally enforceable and that the institution must reimburse the Fund for the amount of the loan he determines to be legally unenforceable, rests on the nature of the institution's responsibilities as a trustee of the loan Fund. By accepting responsibility for the administration of the loan Fund, the institution accepted a fiduciary responsibility with regard to the administration of assets of the Fund, including the duty to make and collect loans from the Fund in a competent manner, and the duty to avoid actions which would undermine or destroy the value of the loan obligations, which obviously constitute the primary asset of the loan Fund. The responsibility of the institution as trustee of Fund assets has long been recognized by the Department, and these particular applications of that responsibility rest on traditionally recognized principles of common law. Moreover, as the grantor of this trust and its residual beneficiary, the Department obviously has the authority and responsibility to identify those instances in which Fund assets have been lost or rendered valueless because of the actions or omissions of the institution, and to demand that the institution reimburse the Fund for the amount of loss caused by that act or omission.

The comments that the use of the term "indemnify" implies that the institution must secure insurance for its actions with regard to the Fund, and that the statute does not authorize the imposition of such a cost, plainly miss this point, as does the comment that an institution need not comply with this provision if it is subject to a State law limiting

the authority of a State officer or agency to agree to indemnify another unless funds are appropriated for that purpose. The proposed rule did not require an institution to secure an insurance policy for itself, or to enter into some new indemnification agreement with the Department. The rule merely articulated the responsibility the institution has already assumed by virtue of its existing relationship with the Department with regard to the Fund. To avoid misunderstanding, however, the final rule replaces the words "indemnify the Fund" with the more general terms "reimburse the Fund" to describe the responsibility of the institution.

The comment that "legally enforceable" means enforceable by lawful means, as opposed to merely enforceable by lawsuit, is well-taken, and the Secretary wishes to clarify that to the extent that the Department has collected an assigned loan, particularly by offset against a Federal tax refund, that loan was legally enforceable, whether or not the judicial statute of limitations had expired on the loan. Opportunities for offset by the Secretary are, at this time, quite limited: the statutory authority for tax refund offsets now extends only through December 31, 1987, and the only other prospect for offsets lies with those payments due to debtors who are identified as Federal employees.

As a practical matter, therefore, the term "enforceable," as used in these regulations, now means enforceable by the Secretary by way of lawsuit. Recent amendments to the Act may make this issue as it involves application of the statute of limitations moot for the present: section 484A of the Act, added by Pub. L. 99-272, provides a six-year limitation period, commencing on the date of assignment of the loan to the Secretary, for suits by the United States to enforce assigned loans. 20 U.S.C. 1091a(a)(4)(C). Consistent with case law governing the applicability of statutes of limitation, the Secretary considers this statute to provide the United States a full six-year period for collection litigation, from the date of assignment, whether or not any period of limitation previously applicable to that account had expired. Because of this provision, therefore, it does not appear likely that the loans assigned in the near future under this regulation will be unenforceable by virtue of the running of a statute of limitations.

As to other defenses, such as misrepresentation or failure of consideration, however, the United States as assignee of the loan enjoys no special protection. Moreover, unlike questions of the running of the period of limitations, which are more typically resolved with a minimum of documentation, the United States is unavoidably and totally dependent on the institution when confronted with defenses raised by debtors based on claims of fraud, misrepresentation, and various forms of failure of consideration. Defending against these kinds of charges will require the United States to expend a considerable amount of time and effort in retrieving from the institution documents that may have been lost or discarded and identifying witnesses who may long since have left its employ or had their recollection dimmed by time. The Secretary therefore considers it reasonable to require the institution to reimburse the Fund in those cases in which he determines that allegations of these kinds of defenses are credible and would make successful enforcement of the loan doubtful. The institution will acquire title to the loan note upon making reimbursement to the Fund. If the institution disagrees with the determination that the loan is not enforceable, it may then attempt to secure a judgment on the loan in order to make itself whole for the reimbursement to the Fund.

The Secretary wishes to recover on assigned loans to the greatest extent practical and cost-effective, and has no interest in peremptorily finding a loan to be unenforceable. The Secretary therefore has every reason to permit an institution to supplement its documentation on a previously assigned account where doing so would not jeopardize Federal efforts to enforce the loan. Because it is in the interests of both the Department and the institution to handle this sort of supplementary action on an informal and expedited basis, the Secretary sees no need to prescribe procedures in these rules to govern this transaction.

Comment: Several commenters objected to the proposed Sec. 674.50(g) which would require an institution to consider a loan in default after assignment, if the rule means that after an account is assigned, the institution must still withhold registration, transcripts, or placement services from that debtor. The commenters stated that assignment terminates the institution's title and equity in the loan, leaving no legal basis for taking further action against the borrower. One commenter recommended that if this provision were to be implemented, the Department should indemnify the institution for any suit filed by a borrower against the institution based on collection efforts after assignment. Two commenters asked what effect this paragraph would have on the institution when computing the default rate. One commenter stated that the institution should not be required to classify the borrower in default status for the purposes of reporting, default rate calculation and funding.

Response: A change has been made. The Secretary has amended Sec. 674.50(h) of the final regulation by clarifying that no further financial aid should be awarded to a borrower whose defaulted Perkins Loan(s) have been assigned unless the borrower has made satisfactory arrangements to repay. This is required under section 484(a)(3) of the Act. The institution need take no further action to collect the loan. The institutional default rate will be calculated each year on the basis of information provided in the annual Fiscal Operations Report as of June 30. Notes reported as having been assigned and accepted by the U.S. Government are not included in the institutional default rate.

Comment: Several commenters stated that money collected on assigned notes after the costs of collection have been met should be redistributed to institutions according to the fair share process.

Response: No change has been made. Although section 463(a)(5)(B) of the Act permits the Secretary to reallocate those amounts to institutions, the Secretary does not intend to implement this authority at this time because of the overarching need to reduce the Federal deficit and the continuing high subsidy of Perkins loans.

SUMMARY OF COMMENTS

December 1, 1987 Summary of Comments and Supplementary Information

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have

been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and Secs. 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, Sec. .3 through Sec. .7 of each proposed regulation have been deleted and replaced with new Sec. .3 and Sec. .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition, each Sec. .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10
Selection of Students for Loans,
Selection of Students for CWS
Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as Secs. 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, Sec. 674.12 provides the Perkins Loan program maximum loan limits and Sec. 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, Secs. 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the Perkins Loan Program Regulations—Perkins Loans and Direct Loans

Changes made to Title IV-E of the HEA by the Higher Education Amendments of 1986 included changing the name of the program from the National Direct Student Loan Program to the Perkins Loan program. In addition, section 405(b) of the Higher Education Amendments of 1986 made certain provisions in the Perkins Loan program applicable only to loans made on or after July 1, 1987 to "new" borrowers. The Secretary refers to these loans in the regulations as Perkins loans and has defined a "Perkins loan" as follows:

A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

Loans made under the Perkins Loan program to other than new borrowers will continue to be known as Direct loans. The Secretary has defined a "Direct loan" as follows:

A loan made under Title IV-E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

These definitions will be found in 34 CFR Part 668, and are therefore not included in these regulations.

Section 674.2 Definitions

Section 464 of the HEA has been amended to provide a nine-month initial grace period for Perkins loans, and the regulatory definition of grace period has been revised. An initial grace period is a period which immediately precedes the date of first required repayment on a loan. A post-deferment grace period is a period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Section 674.9 Student eligibility.

Section 484(b) of the HEA has been amended to require each undergraduate applicant for a loan under the Perkins Loan program to secure at least a preliminary determination of his or her eligibility for a Pell Grant. Section 674.9 has been amended to include this requirement.

Section 674.10 Selection of students for loans.

Section 463 of the HEA has been amended to require that institutions agree to provide loans on a priority basis to students with exceptional needs.

Section 674.12 Loan maximums.

The maximum cumulative amounts a student may borrow have been increased under revisions to section 464(a) of the HEA and these new limits have been included in Sec. 674.12. The maximum amount an eligible student may borrow is increased to $4,500 for a student who has not completed two academic years of study toward a baccalaureate degree, $9,000 for a student who has completed two academic years of study for a baccalaureate degree but has not received the degree, and $18,000 for study toward a professional or graduate degree, including loans borrowed for undergraduate study.

Section 674.16 Making and disbursing loans.

Section 463A of the HEA has been revised to require disclosure, at the time of disbursement, of the total cumulative balance owed by the borrower to that lender, and an estimate of the projected monthly payment for such a cumulative balance. These requirements have been added to Sec. 674.16.

Section 674.17 Federal interest in allocated funds—transfer of Fund.

The Secretary is considering developing the capability of collecting loans directly in the event that an institution closes or no longer wants to participate in the program.

Section 674.19 Fiscal procedures and records.

The Secretary has expanded this section to clarify the manner in which Perkins Loan funds must be deposited. These funds must be invested in insured or collateralized interest-bearing bank accounts or in low-risk income-producing securities such as obligations issued or guaranteed by the United States, and the institution must exercise the level of care in making these investments required of a fiduciary. Any bank charges incurred from depositing these funds into interest-bearing accounts may be paid from the interest earnings on these funds.

Section 674.31 Promissory note.

Section 464 of the HEA has been revised to provide for a late charge of up to 20 percent of the installment payment for costs incurred during the billing cycle for Title IV-E loans made for periods of enrollment on or after January 1, 1986 and this change has been included in Sec. 674.31.

Section 674.32 Special terms—loans to less than half-time student borrowers.

Section 484(a) revised the limitation that a student must be enrolled on at least a half-time basis to be eligible for Title IV aid, and new Sec. 674.32 incorporates the terms of loans to borrowers who enroll for less than half-time study. The statute has provided a specific grace period before the borrower must begin repayment on Perkins loans so that the borrower may have an opportunity to find or resume employment before bearing the burden of repayment. The Secretary has determined that borrowers who receive loans while enrolled on a less than half-time basis should receive this same benefit, and therefore, the repayment period on a loan to a borrower enrolled on a less than half-time basis begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(a) Nine months from the date the loan was made, or

(b) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an

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institution of higher education or comparable institution outside the United States approved for this purpose by the Secretary.

Section 674.34 Deferment of repayment—Perkins loans.

Section 464 has been revised to add new deferments for a Perkins loan borrower:

- For a period of up to 3 years during which time the borrower is a member of the National Oceanic and Atmospheric Administration Corps;

- For a period of up to six months while the borrower is on parental leave; and

- For a period of up to 12 months for a borrower who is a mother with preschool age children and is just entering or reentering the work force and is compensated at a rate that does not exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

In addition, deferment previously available to a borrower who is unable to secure employment because the borrower is providing care (such as continuous nursing or other similar services) required by a spouse who is disabled was expanded to include provision of care to a disabled "dependent." The final regulation will use the term "dependent" to reflect this revision.

The Higher Education Technical Amendments of 1987 (Pub. L. 100-50, June 3, 1987) authorized a new internship deferment. Under the new provisions, a borrower may defer payment for up to two years while serving in an internship program that leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training. The current GSL regulations, 34 CFR 682.210(g), published in the Federal Register on November 10, 1986, and effective December 24, 1986, provide that a borrower qualifies for an internship deferment only if the internship program requires the borrower to hold at least a bachelor's degree before beginning the program, and is a program that a State licensing agency requires the borrower to complete before it will certify the individual for professional practice or service. 34 CFR 682.210(g)(1)(ii), (iii). Since publication of this regulation, the Department identified certain States that do not require the completion of medical internships as a condition for licensing or certification to practice. Because the regulation limited the internship deferment to borrowers who were serving internships required by State authority, students in these States did not qualify for internship deferments. The Department regards the enactment in June 1987 of this amendatory language in both Perkins and GSLP statutes establishing an additional internship deferment for an individual who is not required to complete an internship program before being eligible to practice as a legislative overruling of this particular limitation in GSLP regulations, and not the other limit in those regulations: Namely, that the program require at least a bachelor's degree as a prerequisite for acceptance into the program. 34 CFR 682.210(g)(1)(ii). Therefore, the Secretary has included the new internship deferment in these regulations, but continues to require that the internship require that the borrower hold at least a bachelor's degree before beginning the internship program.

These additions have been incorporated in Sec. 674.34.

The deferment procedures proposed in the NPRM have been revised in order to simplify them and make them consistent with current Department policy regarding the effect of a default on a loan. The proposed rule permitted the institution to regard a borrower who did not make scheduled payments and did not apply for a deferment as in default on the loan, and to accelerate that loan. If the loan was accelerated, the institution could not grant a deferment for any repayments due after the date of acceleration. If the defaulted loan had not been accelerated, the institution could grant a deferment if the borrower repaid the entire past-due amount.

On September 22, 1986 the Department revised its rules regarding the effect of a default on the borrower's ability to qualify for new Title IV aid. 34 CFR 674.2, 51 FR 33726. Under this revised rule, now in effect, a borrower who has failed to make a required payment is in default for purposes of determining both the default rate of the institution and the borrower's status for new aid, unless the borrower executes a new written repayment agreement for that loan. 34 CFR 674.2. The Department intended that institutions have considerable discretion over the terms of the new agreement. In order to encourage institutions to adopt those terms warranted by a borrower's repayment pattern before default, the Department urged institutions to require the defaulter to repay immediately some or all of the past-due amounts on the loan as a term of, or condition for, such a new agreement. It is important, however, that the borrower understands that once a new repayment agreement is executed, and he or she fails to make required payments when due, the loan will immediately revert to default status.

This cure procedure is available, if the institution chooses, even after a loan has been accelerated. It is consistent with that policy to permit the institution to give a deferment to a borrower after his or her loan is in default if the borrower cures the default by executing a new written repayment agreement and meets any conditions set by the institution for the agreement, such as immediate payment of some or all of those installment payments scheduled to be made before the borrower demonstrated to the institution that a condition existed that might qualify him or her for a deferment.

This revision imposes no additional burden on the borrower or the institution beyond that proposed in the NPRM and, in fact, grants greater discretion to the institution. The Secretary intends that this final rule apply to all requests for deferment received by institutions after the effective date of this final rule, regardless of the date on which the loan was made. The Department has always regarded the availability of deferments as a matter of right only upon timely request and timely, satisfactory documentation that the borrower qualified for the deferment; neither the proposed rule nor this final rule represents any change in that policy.

The final rule also clarifies that deferments apply only after the borrower is required to begin repayment; the repayment period begins six or nine months after the borrower ceases half-time enrollment. At times a borrower may neglect to notify the institution that he or she has continued studies and remained at least a half-time student at another institution. Regardless of that failure, the borrower was not required to begin repayment until those later studies were completed. The institution holding the loan may reasonably have concluded that the repayment period on that loan had started, and may have demanded payment from the

borrower. Under these circumstances, the borrower may mistakenly characterize his or her request for relief on the grounds of student status as a request for deferment, when it is actually no more than a request that the institution recognize the fact that, because the borrower had not ceased half-time enrollment status, the repayment period had not yet started. The borrower may submit proof at any time, even after a loan has been accelerated, that the repayment period on the loan began at a later date than was originally calculated, and the institution must recalculate that date upon receiving such proof from the borrower. The final rule articulates this long-standing Department interpretation that a borrower whose loan is regarded as in default has the right to the correct calculation of the start of the repayment period. However, the rule also articulates the Department's policy that the borrower remains responsible for payments that would have been due in any event, and that the institution is under no obligation to grant a deferment with regard to those past-due payments, and may immediately enforce its demand for those payments.

Section 674.57 Cancellation for volunteer service—Perkins loans.

The 1986 amendments authorize an institution to cancel up to 70 percent of a borrower's Perkins loan plus the interest on the unpaid balance for service as a volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973. Fifteen percent of the total principal amount of the loan plus interest on the unpaid balance may be canceled for each of the first and second twelve-month periods of service and 20 percent may be canceled for each of the third and fourth twelve-month periods of service.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675, AND 676—General.

Section .2-Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in Sec. .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in Sec. 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of

funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in Sec. .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

Public Comments and Departmental Responses Relating to Part 674 (Perkins Loan)

Section 674.8—Program Participation Agreement.

Comment: Many commenters objected to the proposal in Sec. 674.8 requiring the institution to restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received if the institution improperly disbursed the loan or failed to exercise due diligence in its collection. The commenters recommended that repayment be required only when a financial loss to the Government occurs and stated that repaying the administrative cost allowance taken on these awards would be administratively burdensome. One of these commenters suggested that a 3% allowable error and omissions rate be allowed. Also, the commenters suggested there is no due process allowed before the institution is required to return the funds.

Response: A change has been made to clarify the intent of the rule. The subject of institutions restoring monies to the Fund has been clarified and moved to Sec. 674.13—Reimbursement to the Fund. The Secretary intends by this rule to require the institution to restore amounts lost to the Fund because of the conduct of the institution or its agents. The relationship of the institution to the Fund has long been characterized by the Department as a trust relationship. This rule applies to that relationship traditional principles governing the responsibility of trustees for losses of trust assets caused by their acts or omissions. As such, the rule codifies existing Department views on the consequences of that responsibility, but does not adopt any new principle or create any new ground of liability.

Under these principles, the institution as trustee is responsible for restoring to the trust those funds used in violation of the directions of the party establishing the trust, the Department. Section 674.13(a)(1) addresses the institution's responsibility with regard to those loans or portions of loans which the borrower was not eligible to receive. These disbursements include overawards caused by a failure to review information available to the institution, such as other aid awarded to the individual in excess of need. See also 34 CFR 674.14(c)(2). The institution is likewise responsible, under this principle, for loans to individuals who were not eligible for a loan if the institution should have discovered that fact by a review of information in its own records, such as records regarding academic progress, repayment status on prior loans held by the institution, and immigration status.

The institution as trustee is also responsible for exercising reasonable care in making loans and due diligence in attempting to enforce the loans. Section 674.13(a)(2) addresses the institution's responsibility with regard to loans that it made in the proper amount to eligible borrowers, but on which it failed to exercise due care in collecting. The revised rule recognizes that for these loans, financial loss to the Fund occurs only in the event of default, and requires the institution to restore to the Fund that full unpaid portion of the loan with regard to which the institution failed to exercise reasonable care in disbursing, recording, or attempting to collect. The institution receives no credit for the institutional share of the uncollectible loan under this provision precisely because it had committed that ICC to the Fund for future lending; the loss to the Fund includes the share of the uncollected loan derived from the ICC, and the institution as trustee is required to compensate the Fund for the loss. For example, the institution is responsible, under this principle, for that portion of a loan evidenced by a promissory note that was altered, unsigned, or lost, or which lacked borrower acknowledgement of all advances of loan funds. If the institution uses a note that incorporates the repayment schedule, the institution likewise makes itself responsible for due care in executing and retaining that schedule.

The rule also regards a failure to comply with the regulatory collection requirements as a cause of the loss to the Fund on an outstanding defaulted loan. Examples of failures to exercise due diligence include any failure to take the following actions in a timely and effective manner: To skip trace promptly, to engage a collection firm, to sue a gainfully employed or otherwise solvent debtor, to report to a credit bureau, or oppose an undue hardship petition in bankruptcy when such opposition is well-grounded and cost-effective.

In some instances, the connection between the institution's conduct and the loss on the loan is fairly clear. For example, the causal connection is reasonably clear where the institution does not sue a gainfully employed debtor whom the institution or its agent had located and whom it could have sued, and the applicable statute of limitations later runs so as to preclude effectively subsequent attempts to

collect by lawsuit. Because the failure to sue here is so directly related to the lack of recovery, there is little reason for not holding the institution liable for the loss. On the other hand, a lack of causal connection may be equally clear in other circumstances. For example, if the institution failed to sue a gainfully employed debtor and the statute of limitations ran out on the debt, there is clearly a loss to the Fund. However, if the institution was now able to show that this debtor, at the time suit should have been brought, received a discharge of the loan in a Chapter 13 bankruptcy proceeding which made no provision for any payments on consumer debt, it would thereby demonstrate that the loss to the Fund was clearly caused by the bankruptcy and not its failure to sue. The institution under these circumstances would have no liability to the Fund under Sec. 674.13(b)(1)(ii).

The Secretary recognizes that in many cases, the loss on a defaulted loan can be neither clearly attributed to, nor disassociated from, the failure of the institution to exercise due diligence in collection. For example, if the defaulting borrower moves without providing the institution with his or her forwarding address and the institution does not attempt promptly to trace the borrower, a loss to the Fund has occurred, but there may be several causes for that loss. To solve questions of causation in these unclear cases, the Secretary considers it fair and practical to use a rebuttable presumption that losses that occur on loans not diligently collected were caused by that failure to attempt collection. The institution, and not the Department, had assumed responsibility for using due diligence in collecting the loan, and was and continues to be in a better position to know or discover the actual cause of its inability to collect the loan. The Secretary therefore considers it reasonable to place on the institution the burden of rebutting the conclusion that the loss would not have occurred if the institution had complied with its collection responsibilities under Federal regulations. Sec. 674.13(b)(1)(ii). For example, an institution might show that its failure to begin skip-tracing while the borrower's trail was fresh was not the cause of the loss by demonstrating, through later investigation, that the borrower after his or her move was not gainfully employed during the period in which the institution might have brought suit to enforce the debt.

The presumption created in Sec. 674.13(b)(1), that the loss to the Fund resulted from the act or omission of the institution, may also be rebutted as provided in this section by demonstrating that the loss was ultimately cured completely, by subsequent recovery from the borrower or cosigner, or partially, by securing a judgment for the full amount outstanding on the loan. Sec. 674.13(b)(1)(i)(2). The rule provides that the institution must demonstrate, to the satisfaction of the Secretary, that the loss was not caused by its failure to exercise due diligence. In deciding whether an institution has met that burden of proof in individual cases, the Secretary will take into account the extent to which the institution failed to follow the prescribed due diligence requirements.

If the institution reimburses the Fund under this section, it thereby acquires title to the loan in question in its own name, and not as trustee of the Fund, and may retain for its own account any amount later collected on that loan. The institution must restore to the Fund the outstanding balance of the loan in question, including any portion attributable to the institutional contribution to the Fund.

In response to the comment that this rule denies the institution due process, the Secretary notes that any action taken by the Department to enforce the requirements of Sec. 674.13 will arise as a result of audits or program reviews of the institution, and as such will be subject to an administrative review and an opportunity for a hearing under the provisions of section 487 of the HEA. In addition, the Secretary believes that adoption of a specific percentage of losses as "allowable" is not a prudent step for several reasons. No legal basis is apparent for such a prospective forgiveness of liability, and it appears that such a tolerance might have the effect of lessening collection efforts.

Comment: Many commenters strongly opposed the mandatory inclusion of the word "Federal" in Sec. 674.19(a) for identifying an account in which Federal funds are deposited. The commenters cite added cost and confusion of check printing and disbursements. Commenters from State institutions stated they could not comply with this proposal because of dealing with State Treasuries. In addition, numerous commenters objected strongly to the proposed regulation requiring an institution to keep its NDSL and Perkins loans fund cash in a separate account. Many of these commenters cited the undue administrative burden and the cost of maintaining the account. Other commenters suggested that the requirement of a separate account should be mandated on an individual basis for those institutions that did not maintain acceptable accounting practices.

Response. A change has been made. The Secretary has deleted the requirement that the institution include the name "Federal" in the name of the account. However, this final rule continues to provide that institutions must either notify the bank in writing of the Federal character of the account, or include that phrase in the name of the account. However, to further clarify the nature of the funds on deposit in Title IV program accounts, the Secretary has added language to this section to establish more clearly that character.

First, the rule now articulates what has always been clear under the statute and Department policy: Title IV funds may be used by the institution only for program purposes. See 20 U.S.C. 1094(a)(1). The sum of the Title IV funds on deposit in the institution's accounts must therefore always at least equal the amount of those funds it has received but not yet spent on program purposes. Sec. 674.19(a)(3)(i). By accepting these funds from the Department, moreover, the institution accepts a fiduciary responsibility for these funds; under traditional common law principles, the institution that depletes these accounts containing Title IV funds is deemed to make any subsequent deposits of institutional funds into these accounts with the intention of restoring to the depleted accounts trust funds previously illegally withdrawn. The Secretary recognizes that such restorative deposits are commonly made by institutions with specific intent that the restored funds become Title IV funds, and that such funds be used for disbursement to students. Indeed, the Department has, over the years, directed institutions to satisfy liabilities for misspent funds by depositing in these Title IV accounts the amount of institutional funds that would otherwise have been paid over to the Department to satisfy its claim.

The Secretary under this rule places no additional burden on the institution, which was already under a legal obligation to restore improperly withdrawn Title IV funds; rather, the purpose of this rule is to make clear that the Secretary—and the institution—regard these non-Federal funds deposited to depleted Title IV accounts to become part of the Title IV trust funds which the institution holds as

fiduciary. These funds therefore become, as part of the trust fund, immune from attachment by third parties to the same extent as the Federal advances they replaced. The Secretary also agrees that only those institutions that do not maintain acceptable accounting practices should be required to maintain funds in a separate Direct/Perkins account. The regulation has been modified accordingly.

Section 674.31—Promissory note.

Comment: Several commenters objected to the provision that the promissory note be limited to either one piece of paper (front and back) or be multiple pages with the borrower's signature on each page. The commenters believed that this is a cumbersome practice that would only increase clerical error and workload. The commenters suggested the use of a multiple page document using the format "page one of five, page two of five, * * *."

Response: A change has been made. The Secretary has added to the final regulations the alternate provision suggested by the commenters allowing a multiple page promissory note, listing the total number of pages in the note as well as the number of each page.

Comment: One commenter encouraged the Department to require co-signers on every Perkins Loan Promissory note as an aid to collection.

Response: No change has been made. Section 464 of the HEA forbids use of an endorser unless the borrower is a minor and the note would not, for that reason, constitute an enforceable obligation under local law. An institution that requires a cosigner, however, must ensure that the obligation of the cosigner or endorser is itself legally enforceable.

Comment: One commenter suggested that a final provision be added to the promissory note section that states that the lending institution should secure the borrower's permission before sending any information about the borrower's account to a credit bureau. The commenter feared that the proposed requirement would violate the general provision in the Family Education Rights and Privacy Act (FERPA).

Response: No change has been made. The Secretary has interpreted 20 U.S.C. 1232g(b)(1)(D), and in particular 34 CFR 99.31(a)(4)(iv), to permit the disclosure of information regarding default on a Perkins (NDSL) loan to credit bureaus. These provisions of FERPA and regulations permit the institution to disclose information contained in the student's educational record without the student's consent if the disclosure is necessary for enforcement of the terms of financial aid which the student has received; reporting the default to a credit bureau is clearly authorized by this authority.

Comment: One commenter suggested changing the language of the sample promissory note that addresses the consequences to the borrower of default and of acceleration of the loan. The commenter suggested that the note should read that the borrower "will lose" deferment or cancellation benefits for service performed after the institution accelerates the loan.

Response: A change has been made. The Secretary has changed the promissory note according to these provisions as adopted in this final rule.

Comment: Three commenters stated that for clarity and simplicity a standard $2 per month penalty charge should be used regardless of the frequency with which the borrower is billed.

Response: A change has been made. Recent statutory changes in the Higher Education Amendments of 1986 have replaced the late charge based on specific dollar charges for each late installment ($1 for the first month, $2 for each month or part of a month thereafter, if repayments are made on a monthly basis, and $3 or $6 for each interval or part thereof for bimonthly or quarterly repayment intervals), with a late charge provision that requires the institution to assess a late payment charge on each late payment, based on the costs of performing activities required in Subpart C of these regulations for the billing cycle (See: Sec. 674.44), as long as the total charges do not exceed 20 percent of the amount of the borrower's monthly, bimonthly, or quarterly payment. Section 674.31(b)(5) of the final regulations has been amended to read accordingly.

Comment: One commenter suggested the elimination of Sec. 674.31(b)(2) which gives the borrower the option of having graduated installments at his or her request. The commenter suggested that the decision to allow graduated installments should be entirely that of the institution.

Response: No change has been made. The Secretary believes that keeping a borrower in repayment status is a more important objective than requiring equal payments. If a borrower requests a graduated repayment schedule, it is indicative that the borrower intends to repay the loan.

Comment: One commenter stated that the timely filing of cancellation and deferment requests should be clearly stated as a borrower responsibility.

Response: A change has been made. The Secretary agrees with the commenter and the note has been changed accordingly.

Comment: One commenter suggested that Perkins loans be reported to credit bureaus and have their status updated on a monthly basis. Another commenter asked if the IRS tax offset provision should be included in the note.

Response: No change has been made. The Secretary has interpreted FERPA and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus may do so only with the consent of the borrower. An institution must report, according to the reporting procedures of the bureau, any changes in account status. The Federal income tax refund offset program is only a pilot program at present, and for that reason it is premature to include notice of this collection tool among routine disclosures.

Comment: One commenter felt that an institution should be allowed to recover all of the costs of collection—either from the NDSL revolving fund or directly from a defaulted borrower. The commenter advocated the deletion of the 25 percent limitation on contingent fee charges by collection firms that may be assessed against the borrower.

Response: A change has been made. In the past, an institution that used a collection firm and intended to pass on to the debtor the cost incurred in paying the collection firm was directed to include in the promissory note a provision specifying that the amount charged the borrower would not exceed 25 percent of the outstanding principal and interest due on the loan. This direction was based on an interpretation by staff of the Federal Trade Commission (FTC) that section 808 of the Fair Debt Collection Practices Act required a specific identification of the type and amount of such charges. The FTC has since revised this position (45 FR 8027, March 7, 1986) and the Department has removed this provision from the model promissory note. Section 484A of the Higher Education Act, added by Pub. L. 99-272, clarifies the consequences of default as subjecting the defaulting borrower to liability for reasonable collection costs, in addition to other charges specified in the law, such as late charges. Final regulations for Subpart C of this part will address this issue of recovery from the debtor of the costs of collection.

Section 674.33—Repayment.

Comment: Several commenters remarked that proposed Sec. 674.32(b) which addressed "minimum repayment rates" was unclear and unnecessarily complex. These commenters felt that institutions should be permitted to use a general pro rata concept when determining how much each account should be repaid. These commenters were also of the opinion that paragraph (b) is inconsistent with the intent of the statute because requiring minimum repayments to be made on one loan while another is deferred deprives the borrower of the benefit of the grace period or deferment prescribed by the statute.

Response: No change has been made. The minimum repayment rates and the deferment provisions are dictated by statute and therefore cannot be changed. See Sec. 674.33(b).

Comment: Three commenters expressed the opinion that notifying the Secretary of all loans that were being extended past the standard ten-year repayment period served no useful purpose. Two commenters suggested that such extensions only be reported on the Fiscal Operations Report and Application to Participate in the campus-based programs (FISAP). One commenter was opposed to granting any extension in the repayment period due to a borrower's low income.

Response: A change has been made. The Secretary agrees with the comment that notifying the Department of all loans that have been extended beyond the ten-year repayment period is an unnecessary institutional burden. The authority to extend the borrower's repayment period remains with the institution.

Section 674.34—Deferment of Repayment—Perkins loans.

Section 674.35—Deferment of Repayment—Direct loans made on or after October 1, 1980.

Comment: There were fifteen comments relative to the internship deferment provision. Two commenters believed the Secretary should not continue to require a bachelor's degree. One commenter stated that the specificity of the proposed provision would be beneficial to the institution in making its decision on a request for deferment. However, all of the other respondents believed that the new requirements were burdensome, time-consuming and of little benefit.

Response: No change has been made. This requirement conforms with all Title IV statutory and program provisions for internships.

Comment: One commenter requested more specificity regarding when a grace period begins and ends. The inquirer felt there was confusion between date-specific or month-specific interpretations.

Response: No change has been made. Section 464 provides that the repayment period begins nine months after the date on which the borrower ceases to be enrolled as at least a half-time student. The grace period is between these two dates. It is determined by specific dates, and cannot be rounded to approximations coinciding with calendar months.

Section 674.37—Deferment Procedures.

Comment: A wide range of comments were received on this section. One respondent was confused by the options available to the institution when a note has not been accelerated. Another commenter questioned if the borrower must pay the amount in default before he or she may be granted a deferment. Another commenter wanted the institution to retain options because it provided leverage needed to collect some loans. Two other commenters believed that this regulation would be unfair to borrowers whose deferments were not processed through no fault of the borrower. They also expressed the concern that the regulation would be a deterrent to accelerating any loans. Four commenters believed that not calculating the interest had little or no significance except to place an additional costly administrative burden on institutions.

Response: A change has been made. Section 674.37 has been re-written to clarify deferment procedures. To qualify for a deferment on a loan, a borrower must submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, and must do so by the date that the institution establishes.

After a loan is in default, the institution may, at its discretion, grant a deferment if the borrower signs and complies with a new repayment agreement on the loan. The institution may do so even after it accelerates the defaulted loan. An institution may in these cases insist that the borrower immediately repay some or all of the amounts previously scheduled to be repaid before the date on which the institution made its determination that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs. Institutions are not required to grant deferments on loans in default; however, if they do so, by securing a new agreement, there is no reason to forego the recovery for the Fund of the accrued interest on that loan. If the institution regards the calculation of past-due, accrued interest as unduly burdensome, it may deny deferments on a defaulted loan.

December 28, 1988 Summary of Comments and Supplemental Information

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by

subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements-

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met-(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

Walver of Notice of Proposed Rulemaking

The Higher Education Amendments of 1986 changed the formulas contained in the HEA, for determining students' EFCs toward their higher education costs for Title IV programs, including the campus-based programs. One change is the requirement that an amount equal to base year income, rather than projected year earnings, be used in determining the EFC. The financial aid community has raised a concern that unless the Department interprets Part F of Title IV of the HEA to require that earnings from non-need-based employment be considered only as part of base year income and not as a resource, these earnings will be "double-counted" by being treated as a resource in the year earned and considered as base year income for the subsequent award year.

The Department had not identified this concern as of the time it published campus-based regulations on December 1, 1987 that continued the Department's former practice of treating non-need-based earnings as a resource. (34 CFR 674.14, 675.14, 676.14.) However, the Department now recognizes that it is necessary to make an interpretative ruling in order to avoid the anomalous consequences identified above, which the Department believes that Congress did not intend. The Department has determined that non-need-based earnings should be treated as part of base year income and not as a resource.

Section 443(b)(4) of the HEA requires that institutions stop funding CWS employment with CWS funds once the CWS recipient has earned more than $200 above his or her need from any employment, whether or not that employment is need-based. The statutory language is silent as to the time period to be considered in making the assessment of whether a student's earnings have exceeded his or her need. The Department is issuing an additional interpretative rule to provide this time element, which is necessary to implement the statute. The Department will consider all earnings earned subsequent to the time that a student's need is met, including both need-based and non-need-based earnings, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is reached. Non-need-based earnings earned prior to the time a student's need is met will not be counted toward meeting the student's need but will instead be used only as part of base year income in the subsequent award year.

As a direct consequence of these interpretative rulings, the Department's monitoring requirements for non-need-based earnings are being eliminated and no adjustments to financial aid packages will be required to be made as a result of such earnings during the award year except with respect to the CWS exception, noted above. Therefore, monitoring of non-need-based employment is not necessary except when an institution continues to fund a student's CWS employment with CWS funds after that student's need has been met. In that circumstance, monitoring will begin when the need has been met and will end when the use of CWS funds is discontinued.

Summary of Comments

July 21, 1992 Federal Register

Section 674.2(b) Full-Time Graduate or Professional Student

Comment: The Secretary received several comments on the proposed provision in Sec. 674.2(b) that would define the term "full-time graduate or professional student." All commenters supported the change. They felt that the proposal was similar to the method used by the Guaranteed Student Loan programs, and that this is an advisable approach that allows an institution to determine who may be classified as a full-time graduate or professional student.

Discussion: The Secretary has determined that it is in the best interest of the Perkins Loan program to allow institutions to determine when a student is a full-time graduate or professional student as what constitutes a full-time academic workload differs by institution and program, as well as by curriculum and practice.

Changes: None.

Section 674.31 Promissory Note

Comments: Several commenters were in favor of the clarification on the capitalization of penalty charges assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

Discussion: The Secretary agrees with the commenters that this section should clarify that institutions still may capitalize the penalty charge assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

Changes: None.

Section 674.31 Promissory Note

Section 674.32 Special Terms: Loans to Less Than Half-Time Student Borrowers

Section 674.33 Repayment

Section 674.34 Deferment of Repayment—Perkins Loans

Section 674.35 Deferment of Repayment—Direct Loans Made on or After October 1, 1980

Section 674.36 Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans

Comments: Several commenters questioned the proposed deletion of the word "regular" from the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in these sections. The deletions would allow students who were not pursuing a degree or certificate to receive a deferment for attending an institution at least half-time.

Discussion: The Secretary agrees with the commenters that the determination of when a repayment period begins and when a student qualifies for a deferment for attending an institution should be tied into the student's status as a regular student. Under 34 CFR 668.7(a)(1) a student is required to be a regular student in order to be eligible to receive a loan. The word "regular" originally was considered not needed in Secs. 674.31, 674.32, 674.33, 674.34, 674.35 and 674.36 because all eligible students are regular students. However, the proposed deletion of the word "regular" would have allowed students no longer enrolled for the purpose of obtaining a degree, certificate, or other recognized credential to receive an advantage in determining when a repayment period begins or to qualify for a student deferment. This was not the intention of the proposed deletion.

Changes: The final regulations reflect any necessary additions of the word "regular" in the above listed sections for consistency. The final regulations do not delete the word "regular" as proposed in the NPRM.

Section 674.38(a)(1) Postponement of Loan Repayments in Anticipation of Cancellation

Comments: Many commenters supported the addition of Sec. 674.53 and 674.54, teacher cancellation, to the list of reasons for postponement of loan repayments in anticipation of cancellation. One commenter suggested that the section be expanded to include loan cancellation for health professionals who agree to work in a medically underserved area. Another commenter requested uniform guidelines for handling postponement in anticipation of cancellation requests.

Discussion: The Secretary is revising Sec. 674.38(a)(1) to crossreference Sec. 674.53 and Sec. 674.54. These sections inadvertently were not listed in the December 1, 1987 regulations. The Department has no statutory authority to provide loan cancellation for health professionals who agree to work in a medically underserved area. The Department has

provided guidelines for handling postponement in anticipation of cancellation requests in the Federal Student Financial Aid Handbook.

Changes: None.

Section 674.42(a)(2)(x) Contact With the Borrower

Comments: The Secretary received many comments on the inclusion of this provision in the regulations. All commenters felt that even though the provision is in the Higher Education Act of 1965, as amended, that the additional information to be provided during the exit interview about average loan indebtedness seems irrelevant and presents an administrative burden that has no effect on reducing defaults or in promoting a borrower's increased understanding of loan indebtedness.

Discussion: Sec. 485(b)(1) of the Higher Education Act of 1965, as amended, requires that an institution provide, during its exit counseling, general information about the average indebtedness of students who have loans at that institution under the Perkins Loan Program. The Secretary feels that by providing this information to students, the institution will help students to be aware of having loans and of their responsibilities to repay the loans. The Secretary believes it is appropriate to state this requirement expressly in the regulations so that institutions will be aware of the statutory requirement.

Changes: None.

Section 674.45(c)(1)(iii) Collection Procedures

Comments: One commenter suggested further clarification should be made to this section by cross-referencing the litigation procedures section.

Discussion: The Secretary agrees with the commenter and has decided to make further clarifying changes in this section.

Changes: The Secretary has added a cross-reference to 34 CFR 674.46.

Section 674.43(a) Billing Procedures

Section 674.47(a)(2) Costs Chargeable to the Fund

Comments: The Secretary received several comments in support of the revisions to clarify that the costs of all documented telephone calls made during the billing cycle to demand payment of overdue amounts on the loan, that are not recovered from the borrower, may be charged to the Perkins Loan Fund.

Additionally, one commenter stated that the proposed revision was impractical to implement because a number of office staff members do loan collection and each has a separate telephone line. The commenter recommended that an institution be allowed to charge the Perkins Loan Fund average costs to be determined by annual calculations as backup for an auditor.

Discussion: The Secretary believes that making telephone calls and working with the debtor over the telephone, as soon as the borrower is overdue in making a payment, is in keeping with the Department's goal of using all effective methods of collection. The Secretary has determined that only actual costs may be charged to the Fund for telephone calls made during the billing cycle. The Secretary disagrees that it is difficult for an institution to track the actual costs of telephone calls made during the billing cycle and, therefore, an institution may not charge average costs to the Fund.

Changes: None.

Section 674.49 Bankruptcy of Borrower

Comments: Many commenters were in favor of the Crime Control Act of 1990 (Pub. L. 101-647), which provides that the period of time in which a borrower cannot discharge a loan for chapter 7, 11, 12 and 13 bankruptcies has been extended from 5 years to 7 years. The commenters all suggested that the regulations should be revised to be consistent with the current law.

Discussion: The Secretary agrees that the final regulations should reflect the changes to the bankruptcy provisions found in the Crime Control Act of 1990. In addition, the Secretary notes that additional changes were made to the Bankruptcy Code (11 U.S.C. 1328(a)) by section 3007 of the 1990 Omnibus Budget Reconciliation Act (OBRA). The Secretary therefore feels that the final regulations also should be amended to reflect these additional changes.

Changes: The final regulations extend from 5 years to 7 years the period of time in which a borrower cannot have a loan discharged for chapter 7, 11, 12 and 13 bankruptcies as provided in the Crime Control Act of 1990. Further, the final regulations reflect the changes made to the Bankruptcy Code by section 3007 of OBRA. The regulations provide that a discharge under 1328(a) of the Bankruptcy Code does not discharge an education loan unless the loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition.

Appendices—Promissory Notes

Comments: The Secretary received several comments concerning the promissory notes. Two commenters were disappointed that the provision regarding loan cancellation for full-time law enforcement and correction officers was not included in the NPRM. Some commenters brought to the attention of the Secretary some typographical errors, and one commenter agreed with all the proposed changes.

Discussion: The Secretary thanks the commenters for their careful review and agrees that the new cancellation provision provided by the Crime Control Act of 1990 should be incorporated in the promissory notes. To provide the public with an opportunity to comment in a separate NPRM, the Secretary intends to propose regulations concerning the requirements for a borrower to qualify for the new loan cancellation provision.

Changes: The loan cancellation provision for service as a law enforcement or corrections officer has been included in the promissory note. All typographical errors have been corrected.

Section 674.33(c)—Low-Income Individual

Comments: The Secretary received several comments on the proposed provision in §674.33(c) that would redefine the term "low-income individual." Several commenters generally supported the modifications proposed here and stated that the change to the Standard Maintenance Allowance (SMA) as a benchmark would simplify the identification procedure for institutions, because SMA amounts should be easily accessible to any institution. However, a few commenters suggested adding language to the regulations to allow institutions to use professional judgment in the computation of a family's ability to pay and to allow latitude in unusual circumstances if an individual does not qualify under SMA criteria. Several commenters stated that while efforts to move toward consistency with Part F of the HEA would normally be applauded, the proposal to extend to the collection area the standards used to award financial aid is overly restrictive and without merit. Some commenters stated that, in practice, borrowers served by the extended repayment period do not want to default, but instead want to repay their student loans. Another commenter stated that the new limits would be unrealistically low for many urban areas and that those who become ineligible will continue to be unable to make larger payments than were required by the original 10-year repayment period. The commenters suggested that extending the borrower's repayment period an additional 10 years will not decrease default rates or reduce the cost of collection.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the term "Standard Maintenance Allowance" has been renamed "Income Protection Allowance" (IPA) and will be used throughout the remainder of this document. The Secretary determined that the IPA is the best indicator of a "low-income individual" and that use of IPA charts effectively reduces any burden associated with individual low-income computations being performed in the financial aid office. IPA charts are more accessible within the institution than are the annual updates of the survey issued by the Bureau of Labor Statistics and, by far, less burdensome. The Secretary maintained provisions in the regulations that permit an institution to reduce a borrower's scheduled repayments as provided in §674.33(b)(9), to extend a borrower's repayment period as provided in §674.33(c), and to defer a borrower's payments as provided in §674.34(i) if the borrower is unable to make the scheduled payments due to hardship. These provisions allow institutions latitude in unusual circumstances in cases where an individual does not qualify as a low-income individual under the new requirements. The Secretary believes that student default rates, institutional default rates, and collection costs will decrease, as a result of the revised definition of a low-income individual.

Changes: None.

Comments: One commenter indicated that the proposal fails to recognize that, while student need is determined in the financial aid office, repayment is generally handled through the business office and the business office does not have access to components used in need analysis or the IPA in particular. Another commenter stated that the proposal appears designed to ease the burden of the U.S. Department of Education, which would no longer be required to develop guidelines for low-income borrowers.

Discussion: It is the responsibility of an institution, in accordance with §668.14 of the Student Assistance General Provisions regulations, to administer adequately its Title IV student financial aid programs. The institution's administration must be coordinated in such a way that all pertinent information relative to student aid from any institutional office is communicated appropriately. In accordance with section 478 of the HEA, the Secretary publishes annually in the **Federal Register** the revised IPA table that is mailed to all institutions participating in Title IV Programs. This distribution is sufficient to provide IPA information to all institutional officials.

Changes: None.

Comments: One commenter questioned whether the new definition of a low-income individual affects student loan borrowers who were counseled and who signed promissory notes prior to the enactment of these regulations.

Discussion: The new definition of the term "low-income individual" is applicable to all Federal Perkins and Direct loans made on or after October 1, 1980.

Changes: None.

Section 674.47(d)—Waiver of Collection Costs

Comments: The majority of the commenters strongly supported the proposal in §674.47(d) which clarifies that the institution does not need to have a written repayment agreement with a borrower as a precondition for waiving collection costs if the borrower makes a lump-sum payment of the full amount or principal and interest outstanding on a loan.

One commenter recommended that the 30-day period in which the institution may waive collection costs that are applicable to a past due balance a borrower pays after the execution of a new written repayment agreement be increased to 60 days to permit institutions and borrowers greater flexibility.

Discussion: The Secretary believes that 30 days allows sufficient time for a borrower to make payment based on a new written repayment agreement. Institutions should bear in mind that only that portion of the past due loan balance paid by the borrower within the 30-day period is subject to the provision of the waiver of collection costs.

Changes: None.

Section 674.47(e)—Limitation on costs charged to the Fund

Comments: Numerous commenters strongly objected to the proposal in §674.47(e) to reduce the amount of collection costs that may be charged to the Fund. Several commenters suggested that rates should be a by-product of the marketplace and should be based on net results and competitive practices within the industry as opposed to being dictated by regulations. A few other commenters recommended that industry standards be used for first placements, second placements, and litigation efforts.

Additionally, a few commenters recommended that the Department continue to allow the 33⅓ percent ceiling for first placements and the 50 percent ceiling for second

placements, because these percentages reflect reasonable collection costs. Several commenters stated that in their opinion the Secretary defined "reasonable" collection costs during the development of the regulations that were published in the **Federal Register**, dated December 1, 1987, and this provision severely reduced the financial drain of the collection expenses from the Federal Perkins Loan Fund by mandating that these costs be passed on to the borrower. Several more commenters stated that there is no evidence to demonstrate that current rates are unreasonable and, therefore, no justification to limit further the amount the institution may charge the Fund. One commenter stated that it would be contradictory to state that it is reasonable for the borrower to pay current collection costs but unreasonable for the Fund to bear those expenses. A few commenters indicated that the circumstances under which those costs exceeding the proposed percentages would not be covered by the borrower are those in which either direct benefit is afforded to the Fund through prompt payment of an outstanding delinquent debt or those in which the institution has no control over costs as is the case with bankruptcy or litigation expenses. Several commenters stated that the proposed reductions are excessive and unaffordable to most institutions and would have a significantly negative impact financially. A few other commenters suggested that the reductions would prove burdensome for institutions and servicers if institutions were to have to make up the difference in the amounts collected. In addition, several commenters suggested that, considering the extensive collection efforts accounts go through, including first referral efforts, second referral agencies are usually beset with very difficult collection accounts and simply will not have the monetary incentive to pursue these accounts as necessary. As a result there will be decreases in collection returns to the Federal Government. A few commenters stated that the Department should be concerned with achieving the greatest yield rather than be preoccupied with collection rates. Some commenters questioned whether the Department has data indicating that the proposed reductions in caps on collection costs will increase high yields and thus help to preserve the Fund. These commenters suggested that if the Department has that data, it should justify its position by sharing that data with institutions before acting as proposed. Otherwise, the Department should not implement the proposal until is has the data. A few commenters objected to the Secretary's statement that excess collection costs could be waived without affecting the contractor's, attorney's, or school's ability to receive a "fair recovery" for their efforts. These commenters stated that regardless of all the rhetoric to the contrary, the judicial system will interpret this statement in defense of the borrower, thus undercutting the Department's original position of what reasonable collection costs are. They went on to state further that a precedent has not yet been established within the judicial system supportive of the original cap and that a precedent should be established before a change is considered.

Discussion: The Secretary determined, based on public comment and a review of Departmental collection efforts, that reasonable collection costs that may be charged to the Fund should be increased from 25 percent for first placement and 35 percent for litigation and second placement (as stated in the November 13, 1990 proposed rule) to 30 percent and 40 percent respectively. Under the previous regulations, the rates were 33⅓ percent and 50 percent respectively. The Department has been successful in collection efforts at contingent fee rates that did not exceed 35 percent. Thus, the Secretary believes that collection agencies can be as successful in collecting on defaulted loans at the 30 to 40 percent rates specified above.

The Secretary believes that it is the borrower's responsibility to repay his or her loan prior to default. If the borrower does not repay prior to default, then it is reasonable to expect the borrower to pay any costs associated with collecting past due amounts. The Secretary believes that the taxpayer should not have to bear the costs for the borrower's failure to pay his or her debts. The Secretary has determined that the 33⅓ percent and 50 percent rates have been used for a long enough period of time to show that they do not significantly increase recoveries. Collection agencies do little more at the 50 percent rate than at the 33⅓ percent rate. In light of scarce Federal dollars and the Secretary's desire for all eligible students to have access to student financial aid, the Secretary believes that the Fund must not bear the expense of collection costs of a borrower who will not repay a loan. The revolving Fund will be depleted and deserving students will be denied loans, if institutions continue to charge the Fund for expenses that should rightfully be borne by a borrower who has defaulted. The Secretary has reduced the collection costs based on a balancing of factors affecting the management of the Funds.

As stated previously in this discussion section, the Secretary believes that collection agencies can be successful in collecting defaulted loans at the 30 to 40 percent contingency fee rates. At the same time, the Secretary also believes that the reduction in collection costs chargeable to the Fund will not be burdensome or have a negative impact on the institutions or the servicers. The Secretary did state on page 47440 of the NPRM that "* * * the proposed reduction in the amount of collection costs that can be waived as to the borrower and paid from Fund assets still provides a fair recovery for the contractor or attorney * * *." The Secretary advanced this proposal to limit the amount of waived collection costs that may be charged to the Fund. The Secretary does not intend to prescribe a limit on the collection cost rate or to imply that the imposition of a collection cost at a rate in excess of that proposed here be available as a defense to a borrower. The Secretary recognizes that the amount that can be recovered from the Fund may not provide a complete recovery for the contractor or attorney, but believes that the amount recovered from the Fund still provides a fair recovery of the expenses involved in these accounts, while at the same time lessening the drain to the Fund. Furthermore, when interpreting these regulations, the judicial system should give deference to the Secretary's statement of intent in adopting the regulations. The Secretary is not just amending the regulations to change the amount of contingent fee collection costs that may be paid from Fund assets. The Secretary is also amending the regulations to permit the institution to use Fund assets to pay the actual amount of those court costs specified in 28 U.S.C. 1920. Those court costs were previously included in the amount chargeable against the percent limits on contingent fees.

Changes: The Secretary is amending §674.47(e) by increasing the costs chargeable to the Fund to 30 percent for the first placement and 40 percent for litigation and second placements.

Comments: Several commenters indicated that unlike most schools, the Department is not restricted in its efforts to collect on assigned loans. For example, the Department is allowed to waive costs, compromise, or accept repayment terms for whatever time frame it so chooses. A few

commenters suggested that if the regulations allowed for some institutional discretion in settling accounts, such as permitting the waiver of some portion of interest, the reduction in the collection costs chargeable to the Fund would not be nearly as problematic.

Discussion: The Secretary believes that while institutions have some flexibility in settling Federal Perkins Loan accounts, including the authority to waive a percentage of collection cost under §674.47(d), a provision that would allow institutions to compromise, forgive, or forget some portion of the amount due would be detrimental to the intent of the Federal Perkins Loan Program (replenishing the Fund). At this time, the Department is not considering any proposals to allow an institution to compromise or accept repayment terms other than those allowed in the regulations at §674.33.

Changes: None.

Comments: One commenter indicated that the Secretary's statement in the preamble to the NPRM, that said that borrowers in advanced stages of delinquency enter repayment promptly after initial demand by a new collector, is inaccurate and suggested that the Secretary obtain valid data from institutions and contractors who perform collection functions daily.

Discussion: As previously stated on page 47440 of the preamble contained in the November 13, 1990 NPRM, the Secretary has over the past 10 years negotiated over a dozen major collection contracts on defaulted student loans. Based on the Department's experience in collecting defaulted loans, which were typically in advanced states of delinquency (approximately three to five years in default), the Secretary believes that a significant portion of those defaulters who enter repayment do so promptly after initial demand by a new collector. Generally, borrowers in advanced stages of delinquency have begun to earn a substantial income, enabling them to begin repayment. These borrowers are, therefore, in a better position to repay their student loan debts on a regular basis. Opinions by guarantee agencies support the Department's position regarding borrowers in advanced stages of delinquency. Based on a study conducted by the American Management Systems, Inc., for the Department of Education (February 1989), guarantee agencies revealed that: "Most individuals involved in student loan collections [such as lenders and collection agents] recognize that student loans become more collectible over time because borrowers become more responsible—they find jobs, establish credit, and gain assets, and are in a better position to repay the loans. Most guarantors conclude that their recovery rate on accounts older than five years is from 25 percent to 70 percent. In the first six to eight months after default, guarantors find that many borrowers are financially unable to pay."

Changes: None.

Comments: A few commenters stated that the Department should recognize that the Federal Perkins Loan Program is well managed at the institutional level and that management has resulted in a declining default rate. A few other commenters suggested that current regulations governing the area of collection costs are very complex and that the proposed regulations add further complexity. Several commenters strongly urged simplification of the regulations. Several other commenters suggested that, if the Department must make reductions in the caps on collection costs chargeable to the Fund, they be implemented through a sliding scale of reductions to allow the impact to be felt the most by institutions with the highest default rates; i.e., the higher the default rates, the lower the cap. In addition, a few commenters suggested that since the Secretary offers an incentive to the borrower in the form of waiving collection costs, an incentive should be offered to institutions to collect on accounts in the form of a graduated cap. Additionally, a graduated cap related to default rates versus an across the board cap might be viewed more favorably by the judicial system.

Discussion: The proposed regulations serve to reduce complexities in the Federal Perkins Loan Program regulations. For example, a requirement pertaining to the waiver of collection costs chargeable to the Fund under §674.47(d) will be eliminated from the collection procedures. Institutions and borrowers will no longer be required to enter into a new written repayment agreement in order to waive collection costs for lump sum payments made on defaulted loan accounts. In addition, for institutions that hold small balance accounts, the rule under §674.47(g) will reduce many of the write-off requirements. A sliding scale or a graduated cap concept for collection costs purposes would prove burdensome for institutions and would create unnecessary complexities in the regulations and in the overall collection process. The Secretary believes there are other less complex ways of providing incentives to institutions to collect loan payments and keep defaults down. The provisions contained in the current regulations governing the area of collection costs provide the necessary guidance that allows institutions to manage properly the Federal Perkins Loan Program.

Changes: None.

Comments: Several commenters indicated that there appears to be confusion regarding the circumstances under which reduced contingency fees can be charged to the Fund. The commenters further stated that the preamble indicates three occasions, while the proposed regulatory language implies that the new caps placed on costs chargeable to the Fund affect all collection costs incurred more than 30 days after the execution of a new repayment agreement. In addition, one commenter stated that the proposed regulations recognize that, for amounts paid later than 30 days after signing a new repayment agreement, current rate structures are justified. Therefore, the proposed regulations would only affect accounts that qualify for the waiver of collection costs. The commenter did not believe the factors listed in the proposed regulations provide a compelling argument to justify a rate reduction for this waiver period.

Discussion: The Secretary believes that this is necessary to clarify that the new limitations on the amount of contingency fee costs chargeable to the Fund apply to collection costs that have been waived by the institution in conjunction with a borrower signing a new written repayment agreement and making payments within 30 days under §674.47(d) and to collection costs incurred by the institution more than 30 days after the execution of a new repayment agreement. The preamble (55 FR 47439) describes three instances in which an institution may charge the Fund for collection costs arising in connection with contingency fee charges. In the first situation described in the preamble, the institution, pursuant to §674.47(d), may have agreed to waive the enforcement of some or all of the collection costs, including contingency fees. For example, if the borrower enters a new repayment agreement with the institution and

repays one-half of the past-due outstanding principal and interest balance on his or her defaulted loan account within 30 days of the date of the execution of the agreement, the institution may waive the collection costs that have been incurred through the date of the payment. Payment in full can permit a full waiver of collection costs that may be charged to the Fund. To the extent that these accrued costs have been waived under §674.47(d), the institution may charge the costs against the Fund, subject to the limitations applicable under §674.47(e).

As under the current regulations, an institution must assess against the borrower the full amount of any collection costs incurred in collecting the remaining balance of the loan under the repayment agreement after the expiration of the 30-day waiver period. An institution may not charge the Fund for collection costs arising in connection with contingency fee charges for amounts paid more than 30 days after the signing of the repayment agreement, unless the second or third situation described in the preamble is applicable. Specifically, the institution may not charge the Fund for collection costs arising in connection with contingent fee charges for amounts paid more than 30 days after the signing of the repayment agreement unless the institution is legally barred from assessing the full amount of these costs against the borrower or unless the institution has demanded that the borrower pay these costs but the amount recovered from the borrower is insufficient to satisfy both the contingency fees and other collection costs.

Furthermore, the new limitations on the amount chargeable against the Fund do not affect an institution's ability to negotiate contingency fee arrangements and assess the borrower at a rate in excess of the limits under §674.47(e) with respect to those amounts paid more than 30 days after the signing of the new repayment agreement. By establishing the new limitations on the amounts chargeable against the Fund, the Secretary does not intend to reduce directly or indirectly the contingency fee rate charged on recoveries outside that 30-day period.

Changes: None.

Comments: One commenter suggested that the Secretary allow institutions sufficient time to make a transition from the old limits to the new ones.

Discussion: The Secretary, by virtue of the 45 days between the publication of the regulations and their effective date, will allow sufficient time for institutions to implement these regulations and to make the transition from old to new limits.

Changes: None.

Comments: Several commenters stated that it will be necessary to renegotiate contracts with agencies in order to reduce the amount of collection costs to be retained by the agency. In addition, if the agency refuses to renegotiate the original contract, institutions could be forced to pay the difference to meet due diligence requirements. One commenter pointed out that ongoing surveys by the American Collectors Association show that fee cuts ultimately and absolutely mean substantial cuts in performance and could ultimately reduce the ability of an agency to service accounts properly. Several commenters stated that institutions will be unable to find collection agencies willing to undertake collection responsibilities at the lower rates and that many reputable and proven collection firms will leave the student loan market forcing institutions to use less expensive collection agencies with unproven collection records. Several other commenters stated that many firms represent student loan clients in bankruptcy court, file proofs of claim, attend meetings of creditors, review bankruptcy court documents, attend confirmation hearings, object to confirmation, conduct discovery in various bankruptcy court proceedings, and contest requests for hardship discharge. A few commenters stated that it will become necessary for some firms, should institutions wish them to continue to represent them in bankruptcy cases, to charge an hourly fee for bankruptcy representation.

Discussion: Institutions must make a diligent effort to negotiate better contracts with collection firms in order to receive the best service possible. Institutions should have at least two or three collection firms from which to choose and should demand quality service and not allow agencies to dictate to them.

Changes: In response to the comments, the Secretary has amended §674.47(3) of the regulations by increasing the amount of collection costs that may be charged to the Fund to 30 percent for first placements and 40 percent for litigation and second placements.

Section 674.47(g)—Write-offs

Comments: Several commenters fully supported the Secretary's proposal in §674.47(g) to allow institutions to write off accounts of less than $25.00 and stated that the change makes good business sense. A few commenters stated that this change will make it simpler to assign accounts to the Department. A few other commenters stated that while the reduction in the number of accounts subject to write-off will ease the paperwork and administrative burden on institutions it will not be cost effective to be required to comply with the provisions of §674.47(g)(1)(i) through (iii). A commenter suggested that, rather than restricting institutional write-offs to balances under $25, the Secretary make a change to include balances under $200.

Discussion: The Secretary agrees with the commenters and does not intend for institutions to continue carrying out all of the procedures contained in current regulations in order to write off small balance accounts. Under current regulations, an institution is encouraged to assign to the Department accounts over $200. Further, it is encouraged to make those assignments before the statute of limitation period has run, since the institution need not complete the course of semiannual collection efforts prior to assigning the accounts. The new regulation is intended to increase the number of defaulted loans assigned to the Department by lowering the minimum amount that qualifies for assignment from $200 to $25 and to give institutions added incentives to assign the loans by lowering the authority to write off defaulted accounts with minimum balances from $200 or less to balances under $25.

Changes: The Secretary is revising §674.47(g) of the regulations by removing paragraphs (g)(1)(i) through (g)(1)(iii) of this section to reduce the due diligence steps required by institutions to write off small balance amounts of less than $25.00. Further, §674.50 is amended to include requirements for institutions to follow before assigning a borrower's account of at least $25.00 to the Department for collection.

PART 675-FEDERAL WORK-STUDY PROGRAM AND JOB LOCATION AND DEVELOPMENT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A-Federal Work-Study Program

Sec.

Subpart B-Job Location and Development Programs

Appendix A [Reserved]

Appendix B-Model Off-campus Agreement

Summary of Comments

Authority: 42 U.S.C. 2571-2756a, unless otherwise noted.

Note: Authority citation amended July 21, 1992, effective September 18, 1992. Heading amended December 21, 1992, effective February 4, 1993.

Subpart A-Federal Work-Study Program

Sec. 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751-2756b)

Sec. 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Award year

Clock hour

Enrolled

Guaranteed Student Loan (GSL) Program

HEA

Income Contingent Loan Program

Pell Grant Program

Perkins Loan Program

PLUS Program

Secretary

SLS Program

Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support to students with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by the institution according to its own standards and practices.

Full-time undergraduate student: An enrolled undergraduate student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

*Institution of higher education (institution). A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

<u>*Need-based employment</u>: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of Sec. 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in Sec. 675.16.

Student services: Services that are offered to students that are directly related to the work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Note: (b) amended July 21, 1992 and December 21, 1992, effective September 18, 1992 and February 4, 1993, respectively.

***Sec. 675.3 Application.**

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

Sec. 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(c) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) Authority to expend funds. Except as specifically provided in Sec. 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year—

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 42 U.S.C. 2752)

Secs. 675.5-675.7 [Reserved]

Sec. 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

Sec. 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752-2753)

Sec. 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752-2753)

(Approved by OMB under control number 1840-0535)

Secs. 675.11-675.13 [Reserved]

***Sec. 675.14 Overaward.**

*(a) Overaward prohibited. (1) An institution may only award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the CWS award, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(1) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(2) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of CWS eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(d)(1) An institution may fund a student's CWS employment with CWS funds only until the amount of the CWS award has been earned or until the student's financial

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need, as recalculated under paragraph (c)(1) of this section, is met.

(2) Not withstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional CWS funding to a student whose need has been met until that student's cumulative earnings from all employment occurring subsequent to the time his or her financial need has been met exceed $200.

(Authority: 42 U.S.C. 2753(b)(3))

***Sec. 675.15 Coordination with BIA grants.**

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

Sec. 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share of his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Note: (b)(1) and (b)(3) amended July 21, 1992, effective September 18, 1992.

***Sec. 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see Sec. 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751-56)

Sec. 675.18 Use of funds.

(a) General. An institution may use its CWS allocation only for—

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG program described in paragraph (f) of this section.

(b) Administrative cost allowance. (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (Sec. 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in Sec. 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) Carry forward funds. (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) Carry back funds. An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) Transfer funds to SEOG. (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under Sec. 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

Note: (a)(4) amended July 21, 1992, effective September 18, 1992.

Sec. 675.19 Fiscal procedures and records.

(a) Fiscal procedures. (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

(b) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see Sec. 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) Retention of records. (1) Records. Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) Period of retention. Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3) (i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) Audit questions. An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

(Approved by OMB under control number 1840-0535)

Sec. 675.20 Eligible employers and general conditions and limitation on employment.

(a) Eligible CWS employers. A student may be employed under the CWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) Agreement between institution and organization.

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) CWS general employment conditions and limitation. (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Sec. 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1)(i) Are on campus; or

(ii) Are in community service;

(2) Involve the provision of student services as defined in §675.2;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

Note: (b) amended December 21, 1992, effective February 4, 1993.

Sec. 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) CWS employment in the public interest. The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves lobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

Note: (b)(6) amended July 21, 1992, effective September 18, 1992.

Sec. 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise be employed by that organization.

(Authority: 42 U.S.C. 2753)

Note: (b)(2)(ii) amended July 21, 1992, effective September 18, 1992.

Sec. 675.24 Establishment of wage rate under CWS.

(a) Wage rates. (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) Minimum wage rate. The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

Sec. 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

Sec. 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student who is employed other than by a for-profit organization as described in Sec. 675.23 may not exceed—

(i) 80 percent for award years 1987-88 and 1988-89, 75 percent for award years 1989-90, and 70 percent for award year 1990-91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in Sec. 675.28, with respect to the amount paid to students under the community service learning program from up to 10 percent of the institution's cumulative CWS allocation and reallocation for an award year. The Federal share of CWS compensation paid to students under a community service learning program from the excess over 10 percent of the institution's CWS allocation and reallocation for an award year may not exceed the limitations specified in Sec. 675.26(a)(1)(i).

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987-88 and 1988-89, 55 percent for award year 1989-90, and 50 percent for award year 1990-91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organization; and

(2) The institution at which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR 607), the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

Note: (a)(1), (a)(1)(ii), and (a)(2) amended July 21, 1992, effective September 18, 1992.

Sec. 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Sec. 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve, or expand services for low-income individuals and families, or to solve

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particular problems related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities, the maximum extent practicable, that relate to their educational or vocational programs or goals.

(c) As used in this section—

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services—

(i) Are direct services, planning or applied research activities, designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education (including tutorial services), child care, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756a)

Note: (a), (b)(2), (c)(2)(ii) amended July 21, 1992, effective September 18, 1992.

Subpart B-Job Location and Development Programs

Sec. 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under Sec. 675.9.

(Authority: 42 U.S.C. 2756)

Sec. 675.32 Program description.

(a) Regular job location and development program. An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) Community services job location and development program. (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under Sec. 675.9.

(2) As used in this subpart, the term "community services" means services that—

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

Sec. 675.33 Allowable costs.

(a)(1) Allowable and unallowable costs. Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in Sec. 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) Federal share of allowable costs. An institution may use CWS funds, as provided in Sec. 675.32, to pay up to 80 percent of allowable costs.

(c) Institutional share of allowable costs. An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

Sec. 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with—

(1) Other participating institutions; or

(2) A nonprofit organization for a community services job location and development program only. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Authority: 42 U.S.C. 2756)

(Approved by OMB under control number 1840-0535)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992.

Sec. 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in Sec. 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

(Approved by OMB under control number 1840-0535)

Sec. 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of Sec. 675.19.

(Authority: 42 U.S.C. 2756a)

Sec. 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Appendix A-[Reserved]

Appendix B-Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ___________, hereinafter known as the "Institution," and _____________, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program [CWS].

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employer's payroll contribution to be borne by the

organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)\1\

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;\2\ and

(c) Documentary evidence that students received payment for their work, such as photographic copies of canceled checks.

\1\It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

\2\These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

SUMMARY OF COMMENTS

December 1, 1987 Summary of Comments and Supplemental Information.

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and Secs. 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, Sec. .3 through Sec. .7 of each proposed regulation have been deleted and replaced with new Sec. .3 and Sec. .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition, each Sec. .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10
Selection of Students for Loans,
Selection of Students for CWS
Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as Secs. 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, Sec. 674.12 provides the Perkins Loan program maximum loan limits and Sec. 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG

and other governmental grants and scholarships, are to be counted as resources.

In addition, Secs. 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the CWS and SEOG Program Regulations

Sections 675.20 and 676.20 Maintenance of effort.

The maintenance of effort requirement contained in section 487 of the HEA governing the CWS and SEOG programs was eliminated when the HEA was amended by the Higher Education Amendments of 1986. Therefore, those provisions have been deleted from the regulations for both programs.

Conforming Changes to the CWS Program Regulations

Section 675.21 Institutional employment.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, a proprietary institution may now employ students to work for itself. However, that employment must be "on campus," provide student services, complement and reinforce the educational program or vocational goals of the student to the maximum extent possible, and not involve the solicitation of potential students for enrollment at the proprietary institution.

The Secretary considers that student services may include furnishing academic, library, financial aid, guidance and counseling, health, and social services directly to students. Examples of acceptable employment would include employment as an academic tutor or peer counselor.

Section 675.23 Employment provided by a private for-profit organization.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, each award year an institution may use up to 25 percent of its allocation to pay the Federal share of the compensation earned by its students who are employed under the CWS program by a private for-profit organization. Section 675.23 contains the conditions under which that employment may be provided.

Section 675.26 CWS Federal share limitations.

Starting with the 1989-90 award year, the Federal share of CWS compensation earned by students working for the institution, for a Federal, State, or local public agency, or for a private nonprofit organization under the CWS program will be 75 percent. For award year 1990-91 and subsequent years, the Federal share of that compensation will be 70 percent.

The Secretary will, however, increase the Federal share in each of those years to 100 percent to pay the compensation of students working for other than a private for-profit organization who are enrolled in an institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities program, or the Strengthening Historically Black Graduate Institutions program, each of which is authorized by Title III of the HEA.

The Federal share of compensation for students working for a private for-profit organization is 60 percent for award years 1987-88 and 1988-89, 55 percent for award year 1989-90, and 50 percent for award year 1990-91 and subsequent award years. In addition, the non-Federal share must be provided by the private for-profit organization.

Subpart B-Job Location and Development Programs

A second job location and development program was added to the CWS statute. This program authorizes an institution to use the lesser of 10 percent of its allocation or $20,000 to fund a community service job location and development program. Subpart B has been revised to include the statutory requirements governing this new program.

Summary of Comments and Responses to the Notice of Proposed Rulemaking-Parts 674, 675, AND 676—General.

Section .2-Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written

acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in Sec. .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in Sec. 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change 'shall not obtain' to 'shall not hold.' Most of the recommendations were to include an 'exceptional conditions' clause that would allow institutions to obtain a student's power of attorney for students studying abroad or a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in Sec. .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that 'source documents' be changed to 'promissory notes' and 'microfilm' be changed to 'microforms' in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

Public Comments and Departmental Responses Relating to Part 675 (CWS)

Section 675.8—Program Participation Agreement.

Comment: A few commenters noted that the requirement in Sec. 675.8(c) that the institution make non-CWS institutional jobs reasonably available to the extent of available funds is more restrictive than the statute. The regulation uses the phrase '* * * non-CWS institutional jobs * * *' but the statute states '* * * equivalent employment offered or arranged * * *.' These commenters recommended that the regulation be changed to conform with the statute.

Response: A change has been made. The Secretary agrees with the commenters and Sec. 675.8 has been rewritten to conform with the statute.

Section 675.18—Use of funds.

Comment: Two commenters objected to the proposed requirement in Sec. 675.18 that before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year. The commenters stated that the requirement would be administratively burdensome because institutions commingle such funds with current funds and it would be difficult for an institution to demonstrate which funds were used first.

Response: No change has been made. An institution must spend any funds carried forward from the previous year before spending its current year CWS allocation. The Secretary has the authority to reallocate unused current year CWS funds to other institutions. Therefore, to identify accurately the amount of such unused current year funds, it is necessary for institutions to spend first those funds carried

forward from the previous year. Further, the Department of Education may not commingle different CWS annual appropriations in its accounting system, by law; therefore these funds must also be reported separately by the institution.

Section 675.19—Fiscal Procedures and Records.

Comment: Many commenters objected to the proposed rule in Sec. 675.19 which would require the institution to maintain a time record in clock time sequences. Most of these commenters cited increased administrative burden on institutions, prohibitive costs (redesigning time-cards, time sheets, and systems), and the difficulty for State-administered institutions to comply due to standardized forms and procedures for State employees. Many of them stated that this method is more prone to error and will lead students to falsify records. Some commenters recommended that this rule may be necessary only for certain institutions where audits have uncovered flagrant abuse of the present method.

One commenter agreed that the proposal was appropriate, but stated that several months would be required to implement it because of the changes necessary in financial aid offices and payroll systems.

Response: A change has been made. In order to complement existing payroll processes, the Secretary has revised the requirement to provide that the certification must contain, or be supported by, time records in clock-time sequence.

Section 675.21 (Sec. 675.21 in NPRM)—Institutional employment.

Comment: Two commenters suggested that the areas of contracted services for CWS employment in other than proprietary institutions should be expanded. The commenters stated that the wording "such as food, service, cleaning, maintenance or security" makes it unclear as to whether other areas are allowed.

Response: No change has been made. The regulation lists the most common examples of areas of contracted services to which CWS students may be employed.

Comment: One commenter objected to the wording of Sec. 675.21 (d)(2), specifically the statement "The institution may enter into an agreement ONLY with a reliable agency * * *." The commenter suggested the deletion of the word "reliable" because it is judgmental and unnecessary.

Response: A change has been made. The Secretary recognizes the judgmental nature of the word "reliable" and has deleted this word. The reference to the agreement between institutions and organizations has been moved to Sec. 675.20(b) of the final regulations.

Comment: A few commenters supported the rule proposed in Sec. 675.21 (d)(4)(ii) that states that the employer may be required to pay such costs as the employer's share of social security or workers' compensation; however, the commenters expressed concern that the regulation does not state when an employer must pay such costs.

Response: No change has been made. In an effort to allow institutional flexibility, the Secretary does not regulate when an employer must pay these costs. The decision as to which entity pays these costs will be contained in the agreement between the institution and the employing agency.

Section 675.23 (Previously 675.24)—CWS Federal share limitations.

Comment: Many commenters objected and expressed concern about the proposal to delete the option which allows an institution to refund excess funds to an off-campus employer when the institution receives more money from the employer than is required to pay the non-Federal share of wages and the administrative costs. The commenters argued that this proposal could jeopardize the willingness of some off-campus employers to participate in the CWS program and to deposit sufficient funds to meet institutional payroll requirements. They also stated that the accounting procedures would be difficult, since the excess funds would have to be carried from one fiscal year to the next.

Response: A change has been made. The Secretary agrees with the commenters and the option will remain in the regulations.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

December 28, 1988 Summary of Comments and Supplemental Information

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a

dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met-(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

July 21, 1992 Federal Register

Section 675.2(b) Full-Time Graduate or Professional Student

See comment and discussion in the preamble under Sec. 674.2(b).

Section 675.26 CWS Federal Share Limitation

Comments: Many commenters disagreed with the proposed change and were concerned that the proposed wording could be interpreted now to exclude students from being employed under CWS during a period of nonenrollment. Some commenters wanted an institution to be able to apply a Federal share toward student wages under the CSL program after 10 percent of the institution's CWS funds were expended for CSL.

Discussion: The Secretary, based on the comments received, agrees that students may be employed under CWS during periods of nonenrollment. Also, revisions clarify that an institution may pay student wages under the CSL program by applying a 90 percent Federal share with up to 10 percent of the institution's CWS funds. Any student wages under the CSL program paid in excess of 10 percent of the institution's CWS funds must be paid by applying the regular CWS Federal share.

Changes: The Secretary, in amending Sec. 675.26(a)(1) by deleting the word "enrolled" before the word "student", has clarified that students may work under CWS during periods of nonenrollment. The regulations have been changed to reflect more accurately the language in the statute regarding the CWS Federal share limitations.

Section 675.28—Community Service Learning Program

Comments: Several commenters are concerned about the proposed language regarding the amount of its CWS allocation that an institution may use to employ students under the CSL program. One commenter believed that if the purpose of the CSL program is to give students the opportunity to work in a setting that offers work-learning opportunities that relate to their educational or vocational goals, that it would be inappropriate for the Department to limit to 10% of the CWS allocation the amount that institutions can expend for the CSL program. Another commenter expressed the opinion that the proposed change was contrary to current statutory language.

Discussion: The Secretary, after further review, agrees that an institution is not restricted in the amount of CWS funds it may use for student wages under the CSL program.

Changes: The proposed change to Sec. 675.28(a) has been rescinded.

Section 675.2—Definitions

Section 675.21—Institutional Employment

Comments: The proposed change to codify the definition of "student services" to include areas in which the student employee provides direct and personal services to other students that are incidental to the training or education being offered seemed reasonable to most commenters. Another commenter felt that while there may be additional service categories not listed in the definition, the "not limited to" language would permit an institution to employ students in that service if appropriate. One commenter suggested that "reasonable accommodation services" be added to the list to comply with the new Americans with Disabilities Act (ADA). Another commenter suggested that campus clerical functions that provide direct and personal services be included. Two commenters felt that the proposal fails to address the student population at most proprietary schools that offer short-term training in a specific skill. As a result, students would be denied on-the-job experience. By limiting the types of employment permitted under the FWS Program, commenters felt that the Department is also limiting the types of job experiences students can obtain. A number of commenters believe that the areas that are proposed to be eliminated from the program can provide valuable experiences to students in their chosen field of study. These commenters further stated that the types of jobs in question actually do provide a service to students, some more directly than others. One commenter felt that work experiences should not necessarily be required to provide direct and personal services to other students in order to assist the student in obtaining future employment in his or her chosen field. The commenter felt the focus should be on work that is beneficial to the student since employers generally seek prospective employees with work experience. One commenter thought that the interpretation and language of the proposed rule went beyond the intent of the statute, which he felt was only to address the solicitation of potential students.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary has revised the definition of "student services" to allow proprietary institutions to employ students in jobs furnishing student services only when these services are directly related to the work-study student's education. Also, in carrying out the provisions of the amendments to the HEA, the Secretary is amending §675.21 of the regulations to allow proprietary institutions to employ students to work for the institution off campus, provided the student is employed in "community services" as defined in §675.2.

Changes: Changes as noted above.

PART 676-FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

Summary of Comments

Authority: 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

Note: heading amended December 21, 1992, effective February 4, 1993.

Sec. 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

Sec. 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Award year

Clock hour

College Work-Study (CWS) Program

Enrolled

Guaranteed Student Loan (GSL) Program

HEA

Income Contingent Loan Program

Pell Grant Program

Perkins Loan Program

PLUS Program

Secretary

SLS Program

(b) The Secretary defines other terms used in this part as follows:

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

*Full-time undergraduate student: An enrolled undergraduate student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements;

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one.

Number of credit hours per term
12

+

Number of clock hours per week
24

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

*Institution of higher education (institution): A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

*Need-based employment: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Note: (b) amended July 21, 1992, effective September 18, 1992.

***Sec. 676.3 Application.**

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b-3)

Note: (b) amended July 21, 1992, effective September 18, 1992.

Sec. 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(c) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) Authority to expend funds. An institution shall not use funds allocated or reallocated for an award year—

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3)

Secs. 676.5-676.7 [Reserved]

Sec. 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b et seq., and 1094)

Sec. 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b-1, 1070b-2 and 1091)

Sec. 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b-2)

Sec. 676.11-676.13 [Reserved]

***Sec. 676.14 Overaward.**

*(a) Overaward prohibited. (1) An institution may only award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it award SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the SEOG award, and the total resources including SEOG exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of SEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) Liability for and recovery of overpayments. (1) A student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3)(i) If the institution makes an overpayment for which it is not liable, it shall promptly attempt to recover the overpayment by sending a written notice to the student requesting payment in full. Failure to make repayment of the overawarded funds renders the student ineligible for further Title IV aid until final resolution of the overpayment.

(ii) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted prior to referring the overpayment to the Secretary.

(iii)(A) If an institution fails to collect the overpayment after taking the action required by paragraphs (d)(3)(i) and, if applicable, (ii), of this section, and the Federal share of the overpayment is $25.00 or more, it shall notify the Secretary identifying the Federal share of the overpayment, the student's name, most recent address, telephone number, and other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts.

(B) If an institution fails in its attempt to collect the overpayment and the Federal share of the overpayment is less than $25.00, the institution need make no further recovery efforts.

(Authority: 20 U.S.C. 1070b-1)

(Approved by the Office of Management and Budget under control number 1840-0535)

[FR Doc. 92-30869 Filed 12-18-92; 8:45 am]

Note: (d)(3) amended December 21, 1992, effective February 4, 1993.

***Sec. 676.15 Coordination with BIA grants.**

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible a for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b-1).

Sec. 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{SEOG}{N}$$

Where:

SEOG=the total SEOG awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

(c) The institution may pay the student directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid.

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may pay a registered student by crediting the student's account is three weeks before the first day of classes of a payment period.

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Authority: 20 U.S.C. 1070b. 1091)

(Approved by OMB under control number 1840-0535)

Note: (f) amended July 21, 1992, effective September 18, 1992.

***Sec. 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see Sec. 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b-1070b-3)

Sec. 676.18 Use of funds.

(a) General. An institution may use its SEOG allocation and reallocation only for—

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS program as described in paragraph (c) of this section.

(b) Administrative cost allowance. (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) Transfer of funds to CWS. (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under Sec. 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b et seq., 1095 and 1096)

Note: (a)(3) amended July 21, 1992, effective September 18, 1992.

Sec. 676.19 Fiscal procedures and records.

(a) Fiscal Procedures. (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

(b) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

(5) Each year an institution shall submit a Fiscal Operation Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(c) Retention of records. (1) Records. Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) Period of retention. Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3) (i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) Audit questions. An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

(Approved by OMB under control number 1840-0535)

Sec. 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, an SEOG may not be awarded for a full academic year that is—

(1) Less than $100, or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b-1)

Sec. 676.21 SEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section—

(1) For award years 1987-88 and 1988-89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989-90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990-91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991-1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989-90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b-2 and 1069a)

Summary of Comments

December 1, 1987 Summary of Comments and Supplemental Information

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute

authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and Sections 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, Section .3 through Section .7 of each proposed regulation have been deleted and replaced with new Section .3 and Section .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition, each Section .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10
Selection of Students for Loans,
Selection of Students for CWS
Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, Section 674.12 provides the Perkins Loan program maximum loan limits and Section 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, Sections 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to

repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the SEOG Program Regulations

Section 676.10 Selection of students for SEOG awards.

In selecting SEOG recipients for any award year an institution must first award grants to those eligible students, including students attending less than half-time, with the lowest expected family contributions in accordance with Part F Title IV of the HEA who are also recipients of a Pell Grant for that year. The institution may then select SEOG recipients who are not recipients of a Pell Grant for that year in priority order of lowest expected family contributions.

Section 676.20 Minimum and maximum SEOG awards.

The maximum grant has been increased to $4,000 and the minimum grant has been reduced to $100.

Section 676.21 SEOG Federal share limitations.

Starting with the 1989-90 award year, the Federal share of SEOG awards an institution makes will be 95 percent of the amount of those grants. For award year 1990-91, the Federal share will be 90 percent of the amount of those awards and for the 1991-92 and subsequent years, the Federal share will be 85 percent of the amount of those awards.

The Secretary will, however, increase the Federal share of SEOG awards in each of those years to 100 percent for any institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program or the Strengthening Historically Black Colleges and Universities program, each of which is authorized by Title III of the HEA.

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made as a result of public comments, the Secretary has made certain changes to conform the regulations to changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99-498, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the latter changes do not implement substantive policy, but merely incorporate statutory changes made to the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations with regard to these changes is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that would be gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, as discussed in the appendix, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information from those agencies or authorities, or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: November 24, 1987.

William J. Bennett,
Secretary of Education

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675, AND 676—General.

Section.2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if

the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in Section .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in Section 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or at a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in Section .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

December 28, 1988 Summary of Comments & Supplemental Information.

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's

parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins

Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

July 21, 1992 Federal Register

Section 676.16(f) Payment of an SEOG

Comments: Several commenters supported the deletion of the reference to NDSL, as the change would make the SEOG regulations consistent with the Perkins Loan regulations.

Discussion: The Secretary has amended the SEOG regulations to be consistent with the Perkins Loan regulations.

Changes: None.

December 21, 1992 Federal Register

Section 676.14 Overawards

Comments: Most commenters supported the Secretary's proposal to recover the overpayments from students in cases in which the Federal share of FSEOG overpayment is $25.00 or more. However, they suggested that funds recovered by the Secretary, minus the reasonable fee, be remitted to the institution to assist other financially needy students. Two commenters indicated that a provision should be added to the regulations stating that, if an overpayment occurs that did not result from student error, the student is not held liable and the institution cannot recover the overpayment from the student. A typical example of this circumstance would be if a student reports his resources and needs accurately and, due to the fault of the institution, the amount of his grant is not recalculated, resulting in an overpayment. Several commenters stated that recovery in such an instance can prove burdensome and unjust to the student already living on a meager income. Four commenters expressed concern over the timeframes required for institutions to notify the student. One commenter stated that requiring a second notification to recover overpayments within a 30-day period is redundant. According to the commenter, the time expenditure and additional mailing costs incurred are not

warranted and would prove to be counter-productive to the intent of recovery.

Another commenter would like to see a 120-day period instead of the 90-day limitation. One commenter stated that students generally do not make serious arrangements until the beginning of the next term when they want to return to school. A third commenter stated that the 30-day period is restrictive and unreasonable during some time periods, such as semester breaks when it may be difficult to contact a student. In addition, the student is only permitted a 10-day time period to make repayment arrangements and, if he or she fails to do so, would become ineligible for additional Title IV funds. The commenter suggested that consideration should be given to allow for two reasonable attempts within a 60-day period and allow for a 120-day period for the student to make repayment arrangements. One commenter suggested that the restrictive 30-day period be omitted and the institution should be given the option to submit the minimum $25.00 if all other attempts to collect have been futile. One commenter felt the proposal would restrict flexibility and force some students out of eligibility because of $25.00 overpayment. The commenter stated that the current regulations appear reasonable because they allow the student and institution to work together to resolve the overaward situation without undue hardship on either party.

Several commenters suggested patterning the proposed FSEOG overpayment system more closely after the Federal Pell Grant system, especially in the areas of institutional errors and institutional discretion. According to a commenter, the Federal Pell Grant overpayment system has a "floor" of $100.00 and the commenter felt the $100.00 floor was more appropriate than the $25.00 floor that is being proposed. Another commenter stated that FSEOG overpayments will, as a rule, be much smaller than Federal Pell Grant overpayments; therefore, mandating the referral of FSEOG overpayments to the Department raises the question of cost effectiveness. One commenter did not believe it would be a useful expenditure of scarce institutional resources to have to make reports to the Secretary. Another commenter felt that this proposal would be paper intensive for just $25.00.

Discussion: Pursuant to section 413D of the HEA, the Secretary must allocate funds to each eligible institution for use in each fiscal year. Similarly, an institution may not use funds allocated for a given award year to make FSEOG disbursements to students in any subsequent award year, or to satisfy any other obligation incurred after the end of the designated award year.

In the majority of instances, any funds recovered by the Secretary will not be recovered in the award year that the FSEOG was disbursed to the student. Therefore, those recovered funds cannot be returned to the institution that made the award to use in a subsequent award year. In cases where an institution recovers FSEOG funds from students made in a prior award year, the institution must adjust award expenditures and administrative cost allowances for the year that the award was made. In fact, as a result of a recovery by an institution of a prior year award or grant, the institution is obligated to repay money to the Federal Government. The FISAP is the mechanism by which repayment is reported to the Department.

If, however, an institution is able to recover an overaward in the award year in which the award was disbursed, the institution may keep and reuse that amount.

The Secretary agrees with the commenters that the number of notifications and timeframes during which notification must be sent by an institution to a borrower to recover an overpayment may be counterproductive to the intent of recover. The Secretary, therefore, has eliminated this provision in the final rule.

The Secretary believes that when a student receives the benefit of an increased award amount, the student is obligated to repay that amount regardless of whether the institution is also liable for the overpayment. This requirement is prescribed in §676.14(d)(1). In cases where the institution is liable for an overpayment because the institution failed to follow the procedures set forth in the regulations, the institution must follow the procedures prescribed in §674.14(d)(2).

The proposed FSEOG overpayment provisions are closely patterned after the Federal Pell Grant "Recovery of overpayments" provisions found in 34 CFR 690.79 of the Federal Pell Grant Program regulations. The Federal Pell Grant Program regulations do not provide for institutional discretion when an institutional error has caused an overpayment. In addition, the Federal Pell Grant Program regulations do not provide a "floor" of $100.00 as one commenter suggested. If an institution makes an overpayment for which the institution is liable in the Federal Pell Grant Program, regardless of the amount, Federal Pell Grant Program regulations require the institution to restore those funds to its Federal Pell Grant account whether or not it collects from the student.

If an institution makes an overpayment for which it is not liable, the institution must help the Secretary recover the overpayment regardless of the amount. The Secretary believes that the proposed requirements for recovery of FSEOG overpayments are less stringent than those required by the Federal Pell Grant Program, in part because institutions are not required to notify the Secretary regarding overpayments of less than $25.00.

Changes: In response to the comments, the Secretary has amended §674.14(d)(3) of the regulations by removing the time-frames in which an institution would be required to contact the student and the Secretary following the initial written notification to the student requesting payment in full.

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PART 682-FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

Subpart F-Requirements, Standards, and Payments for Participating Schools

Subpart G-Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

Subpart H-Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Appendix A-Standards for Acceptable Refund Policies by Participating Schools

Appendix B-Students Status Confirmation Report

Appendix C-Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Appendix D-Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interests Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138]

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Subpart A-Purpose and Scope

682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as "the Federal Family Education Loan (FFEL) programs," in which lenders use their own funds to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Federal Stafford Loan (Stafford) Program, which encourages making loans to undergraduate, graduate, and professional students.

(2) The Federal Supplemental Loans for Students (SLS) Program, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students.

(4) The Federal Consolidation Loan (Consolidation) Program, which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, PLUS (as in effect before October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act and for parent PLUS borrowers whose loans were made after October 17, 1986.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the "Federal Guaranteed Student Loan (GSL) programs."

(iii) The Federal GSL programs are authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guaranty agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1701 to 1087-2)

Note: Section 682.100 amended December 18, 1992, effective February 1, 1993.

682.101 Participation in the FFEL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Students borrowers who have at least $7,500 outstanding in Stafford, SLS, FISL, Perkins, HPSL, student PLUS loans or Parent PLUS loans borrowed after October 16, 1986 may borrow under the Consolidation Loan Program.

(Authority: 20 U.S.C. 1071 to 1087-2)

682.102 Obtaining and repaying a loan.

(a) Stafford loan application. Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(b) SLS loan application. Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(c) PLUS loan application. Generally, to obtain a PLUS loan, both the student and the parent complete an application and submit it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(d) Consolidation loan application. Generally, to obtain a Consolidation loan, a borrower completes an application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the

application to any other lender participating in the Consolidation Loan Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(e) Repaying a loan—(1) General. Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is canceled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy.

(2) Stafford loan repayment. Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) SLS loan repayment. Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(4) PLUS loan repayment. Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) Consolidation loan repayment. Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) Deferment of repayment. Repayment of principal on a FFEL program loan may be deferred under the circumstances described in 682.210.

(7) Default. If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087-2)

682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087-2)

Subpart B-General Provisions

682.200 Definitions.

(a)(1)(i) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year

Campus-based programs

College Work-Study (CWS) Program

Consolidation Loan Program

Dependent student

Eligible program

Eligible student

Enrolled

Guaranteed Student Loan (GSL) Program

Independent student

National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)

Pell Grant Program

Perkins Loan Program

PLUS Program

State

State Student Incentive Grant (SSIG) Program

Supplemental Educational Opportunity Grant (SEOG) Program

Supplemental Loans for Students (SLS) Program

(ii) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Clock hour

Educational program

Eligible institution

Institution of higher education (600.4)

Nationally recognized accrediting agency or association

Preaccredited

Program of study by correspondence

Secretary

Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq.

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of FFEL loans. The term "Authority" also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL loan is made.

Co-maker. One of two individuals who are joint borrowers on a PLUS loan and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FFEL program loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance. (1) The estimated amount of assistance that a student has been or will be awarded, during the period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(ii) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(iii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iv) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(v) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(vi) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL was received, the amount of Stafford, SLS, and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Stafford loan amounts for which interest benefits are not payable;

(ii) SLS and PLUS loan amounts;

(iii) Private and state-sponsored loan programs; and

(iv) Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution. The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by Title IV-B of the Act under which the Secretary directly insures lenders against losses.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an eligible institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours per semester or quarter, respectively, of instruction, or its equivalent.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student. A student who, for a period of enrollment—

(1) Is enrolled in a program above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three academic years of full-time study at an institution of higher education, either before entrance into the program or as part of the program itself; and

(3) Is not receiving aid under Title IV of the Act as an undergraduate student for the same period of enrollment.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in a participating school and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Holder. An eligible lender in possession of a FFEL program loan note that is payable to, or has been assigned to the lender, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)-(4) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer-credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for FFEL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

National credit bureau. A credit bureau with a service area that encompasses more than a single region of the country.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower.

Participating school. A school that has in effect a current agreement with the Secretary under 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term established by the school for which institutional charges are normally assessed. The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2)(i) For a PLUS loan disbursed in more than one installment, the period that begins on the date the first disbursement is made for a loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance; for a PLUS loan disbursed in a single installment, the period that begins on the date the loan is disbursed and ending no later than 10 years from that date exclusive of any period of deferment or forbearance.

(ii) For an SLS loan, the repayment period begins on the date of the last disbursement of the loan and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Consolidation loan, the period that begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25 or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

School. (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS, or PLUS loans for attendance at the institution. For this purpose—

(i) A commissioned salesperson is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) Promote the availability means—

(A) Provide a prospective or enrolled student with FFEL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the FFEL programs to a prospective or enrolled student in order to encourage the student to finance his or her education with a FFEL loan; or

(C) Otherwise use the availability of FFEL loans as a recruiting or retention tool.

(4) The term does not include any educational institution that has a default rate in excess of the threshold rates established under section 435(a)(2) of the Act.

(5) For purposes of an in-school deferment, the term includes an eligible institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV-B of the Act which encourages the making of loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs. An unsubsidized Stafford loan is a loan that does not qualify for interest benefits under 682.301(b).

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141)

Note: Section 682.200 amended December 18, 1992, effective February 1, 1993.

682.201 Eligible borrowers.

(a) Student borrower. Except for a refinanced SLS/PLUS loan made under 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2)(i) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a Stafford loan, and if determined to have need in excess of $200, has filed an application with a lender for a Stafford loan; and

(ii) In the case of a student who seeks an SLS loan for the cost of attendance at any school that participates in the FFEL programs, the student must have received a certification of graduation from a school providing secondary education or the recognized equivalent;

(3) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount that previously was canceled due to the borrower's total and permanent disability; or that was discharged in bankruptcy or that was written off.

(ii) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note or repayment schedule; or

(B) Making a payment on the loan.

(5)(i) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new FFEL loan the borrower receives cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(6) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate, has passed an independently administered examination approved by the Secretary; and

(7) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) Parent borrower. A parent is eligible to receive a PLUS Program loan, other than a loan made under §682.209(e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) Consolidation Program borrower. (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(i) Has an outstanding indebtedness of not less than $7,500 on loans eligible for consolidation under this part; and

(ii)(A) Is in a grace period preceding repayment;

(B) Is in repayment status; or

(C)(*1*) Is delinquent or has made satisfactory repayment arrangements on a defaulted loan; and

(*2*) Will reenter repayment through consolidation.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Certifies that no other application for a Consolidation loan is pending and agrees to notify the holder of any change in address.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1091)

Note: Section 682.201 amended December 18, 1992, effective February 1, 1993.

682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest—(1) Applicable interest rates under the Stafford Loan Program.

(i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower is—

(A) 7 percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) 9 percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) 8 percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter;

(E) Subject to paragraph (a)(1)(vi) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, a variable rate not to exceed 9 percent; or

(F) Subject to paragraph (a)(1)(v) of this section, for a loan for which the first disbursement is made on or after October 1, 1992, 8 percent.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan the applicable interest rate is the rate charged on that previous Stafford loan.

(iii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988 the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(iv) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford, PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(D) of this section.

(v) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on an SLS, PLUS, or Consolidation loan, for a Stafford loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate is the rate provided in paragraph (a)(1)(i)(C) of this section.

(vi) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance of principal or interest on any FFEL Program loan, the applicable rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vii) For a loan with an interest rate of 10 percent, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall—

(A) Calculate an adjustment in an amount specified under paragraph (a)(1)(iv) of this section; and

(B) Credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(1)(v) of this section if the borrower's account is not more than 30-days delinquent on December 31.

(viii) The amount of an adjustment for a calendar quarter is equal to—

(A) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(B) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(C) Divided by 4.

(ix) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall apply any amount computed under paragraph (a)(1)(iv) of this section to reduce the outstanding principal balance as of December 31.

(2) Applicable interest rates under the PLUS program. The applicable interest rate on a PLUS loan is—

(i) 9 percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) 14 percent for a loan made on or after October 1, 1981, but before November 1, 1982;

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, 12 percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under 682.209 (e) or (f), a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent;

(v) For a combined repayment schedule under 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(vi) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1-December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1-December 31 period; plus 3.75 percent; or

(B) 12 percent.

(vii) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1-June 30 period, plus 3.1 percent; or

(B) 10 percent.

(3) Applicable interest rates under the SLS Program. The applicable interest rate on an SLS Program loan is—

(i) 12 percent for a loan covering a period of enrollment beginning on or after October 17, 1986, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under 682.209 (e) or (f), a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent; and

(iii) For a combined repayment schedule under 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule; and

(iv) For a loan disbursed prior to July 1, 1987, if provided for in a promissory note, a variable rate, applicable to each January 1-December 31 period, that equals the lesser of—

(A) The average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12-months ending the November 30 preceding the January 1-December 31 period, plus 3.75 percent; or

(B) 12 percent.

(v) For a loan for which the first disbursement is made on or after October 1, 1992, a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1-June 30 period, plus 3.1 percent; or

(B) 11 percent.

(4) Applicable interest rates under the Consolidation Program. A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(5) Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs. A lender may charge a

borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)-(4) of this section.

(b) Capitalization. (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis or, with the borrower's written consent, capitalize on a quarterly basis interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a FFEL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(5) For all borrowers who are in a period of deferment, a required medical or dental internship forbearance, or the in-school or grace period on a nonsubsidized Stafford loan and have agreed to monthly or quarterly payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) Origination fee for Stafford, SLS, and PLUS loans. Except in the case of an unsubsidized Stafford loan, a lender—

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) Shall charge a borrower an origination fee on an SLS or PLUS loan of 5 percent of the principal amount of the loan;

(3) May deduct the origination fee from the proceeds of the loan;

(4) Shall, in the case of a loan disbursed in multiple installments, deduct a pro rata portion of the fee from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of that loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

(d) Insurance premium. A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 3 percent of the principal amount of the Stafford, SLS, or PLUS loan, if that charge is provided for in the borrower's promissory note.

(e) Administrative charge for a refinanced PLUS or SLS Loan. A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) Late charge. (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(g) Collection charges. (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1087-1, 1091a)

Note: Section 682.202 amended December 18, 1992, effective February 1, 1993.

682.203 Responsible parties.

(a) Delegation of functions. A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) Trustee responsibility. A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

Note: Section 682.203 added December 18, 1992, effective February 1, 1993.

682.204 Maximum loan amounts.

(a) Stafford Loan Program annual limits. (1) Except as provided in paragraph (a)(2) of this section, the total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(i) $2,625, in the case of an undergraduate student who has not successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled;

(ii) $4,000, in the case of an undergraduate student who has successfully completed the first and second years of the undergraduate program of study in which he or she is currently enrolled; and

(iii) $7,500, in the case of a graduate or professional student.

(2) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount a student may borrow may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length,

(b) Stafford Loan Program aggregate limits. The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) $17,250, in the case of an undergraduate student for programs of study at the undergraduate level; and

(2) $54,750, in the case of graduate or professional student, including loans for undergraduate study.

(c) PLUS Program annual limit. The total amount of all PLUS loans that parents may borrow on behalf of each dependent student for any academic year of study may not exceed $4,000.

(d) PLUS Program aggregate limit. The total guaranteed unpaid principal amount of PLUS Program loans that parents may borrow on behalf of each dependent student may not exceed $20,000.

(e) SLS Program annual limit. (1) The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program of study of at least 2/3 of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program of study less than 2/3 but at least 1/3 of an academic year in length; and

(iii) $0 for a student enrolled in a program of study that is less than 1/3 of an academic year in length.

(2) The minimum period for which a student may apply for an SLS loan is the greater of—

(i) The length of the institution's academic year; or

(ii) Seven consecutive months.

(f) SLS Program aggregate limit. The total guaranteed unpaid principal amount of SLS Program loans made to a student may not exceed $20,000.

(g) Treatment of Consolidation loans for purposes of determining loan limits. The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1089)

Note: Section 682.204 amended December 18, 1992, effective February 1, 1993.

682.205 Disclosure requirements for lenders.

(a) Initial disclosure statement. (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing before or at the time of the first disbursement on a FFEL program loan. The written information given to the borrower must prominently and clearly display, in bold print, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell or transfer the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee if applicable, and the insurance premium, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171;

(xiii) The definition of "default" found in 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;

(xiv) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under 682.209 (e) or (f) or a loan made to a borrower attending a school that is not in a State, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance.

(b) Separate statement of borrower rights and responsibilities. In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower with a separate statement, written in plain English, at or prior to the time of the first disbursement, that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan; and

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section.

(c) Disclosure of repayment information. (1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Stafford or SLS loan, the disclosures required by this paragraph must be made not less than 60 days nor more than 240 days before the first payment on the loan is due from the borrower. In the case of a FISL loan, the lender shall make the disclosures during the grace period. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(d) Exception to disclosure requirement. In the case of an SLS or PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of capitalizing—

(1) Principal and interest; and

(2) Interest only.

(e) Borrower may not be charged for disclosures. The lender shall provide the information required to be disclosed by paragraphs (a), (b), and (c) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.205 amended December 18, 1992, effective February 19, 1993.

682.206 Due diligence in making a loan.

(a) General. (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) Processing forms. Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) Approval of borrower and determination of loan amount. (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided on the application form or data electronically transmitted to the lender by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(3) A lender may not approve a loan for more than the borrower requests, the student's unmet financial need, or the maximum established by 682.204, whichever is less.

(d) Promissory note. (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower and any endorser or co-maker a copy of each executed note.

(e) Security, endorsement, and co-makers. (1) A FISL or Federal PLUS loan must be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) Additional requirement for Consolidation loans. (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1083, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.206 amended December 18, 1992, effective February 1, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS, and PLUS loans, other than a refinanced SLS or PLUS Program loan made under 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guaranty agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b) (1) In disbursing a loan, a lender—

(i) (A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or SLS loan in accordance with the disbursement schedule provided by the school;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor or lender, is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the written approval of the borrower that is secured and retained by the school for each FFEL program loan for which funds are released from the account;

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender;

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v)(C)(1) of this section, directly to the school;

(B) In the case of a PLUS loan, a check made co-payable to the institution and the borrower or by electronic funds transfer to a separate account maintained by the school as trustee for the lender; or

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(1) Directly to the student; or

(2) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement on a Stafford or SLS loan to a student who has ceased to be enrolled.

(2) Except as provided in paragraph (b)(1)(v)(C)(2) of this section, neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's written authorization under paragraph (b)(1)(ii)(A) of this section.

(c) A lender shall disburse any Stafford or SLS loan, as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) At least one-half of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the period of enrollment.

(d)(1) Unless prohibited by the guaranty agency, a lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d)(2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i)(A) Only if the loan proceeds will be used to cover documented educational charges to the student that are normally included in a borrower's cost of attendance under

section 472 of the Act for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(B) Only if a student completed the first 30 days of the loan period for which the loan was intended, in the case of a first disbursement of a loan obtained by a student to attend the first year of a program of undergraduate education; or

(C) Only if the student successfully completed the period for which the loan was intended, in the case of second or subsequent disbursement; and

(ii) Within 60 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1085)

Note: Section 682.207 amended December 18, 1992, effective February 1, 1993.

682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) (1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, within 90 days after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)-(v) of this section within 90 days of its acquisition of the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at an eligible school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule—

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment of a Stafford, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee must provide the notice required by paragraph (e)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in 682.401(b)(15)(ii).

(f) (1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, provided false or erroneous information or took actions that caused the student or borrower—

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—

(A) The school notifies the lender under 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guaranty agency" in 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in 682.411(g).

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: new paragraph (e) added September 26, 1991, effective December 12, 1991. Section 682.208 amended December 18, 1992, effective February 19, 1993.

682.209 Repayment of a loan.

(a) Conversion of a loan to repayment status. (1) For a PLUS loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than—

(A) 45 days following the first day that the repayment period begins;

(B) 45 days from the expiration of a deferment or forbearance period;

(C) 45 days following the end of the grace period; or

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in 682.602. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests in writing and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) (i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(7) (i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in 682.210 or 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) Prepayment. (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, the lender may credit the entire prepayment first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal, unless the borrower requests that the lender credit the prepayment to future installments or a prepayment of principal.

(2) If the prepayment amount equals or exceeds 3 full payments under the repayment schedule established for the loan, unless the borrower requests otherwise, the lender may apply the prepayment to future installments and advance the next payment due date, without the prior request of the borrower. If the lender does apply payments to future installments, it shall notify the borrower that the payments have been so applied, and remind the borrower of the repayment obligation and the next scheduled payment due date.

(c) Minimum annual payment. (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in 682.211 or deferment described in 682.210, has been approved.

(d) Combined repayment of a borrower's student PLUS and SLS loans held by a lender. (1) A lender may, at the request of a student borrower, combine the borrower's, student PLUS and SLS loans held by it into a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate. (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to 682.202(e).

(f) Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan. (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within five business days, apply the proceeds to discharge the borrower's obligation on the fixed-rate loan, and provide the refinancing lender with either a copy of the borrower's original promissory note evidencing the fixed-rate loan or the holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent;

(ii) Is considered an SLS loan if the combined loan does not include a PLUS loan made to a parent; or

(iii) Is considered a loan to a "new borrower" as defined in 682.210(b)(7), if all the loans that were refinanced were made on or after July 1, 1987, for a period of enrollment beginning on or after that date.

(g) Conditions for refinancing certain loans. (1) A lender may not refinance a loan under paragraphs (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for insurance or reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 business days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) Consolidation loans. (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(ii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iii) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(iv) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(v) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) In order to qualify for a repayment period under paragraph (h)(2)(ii) of this section, the Consolidation loan must include at least $5,000 in Title IV Part B loans.

(4) For the purpose of paragraph (h)(2) of this section the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(iii) May include loans received prior to the date of the Consolidation loan provided that the loans are included within 180 days after the Consolidation loan is made.

(5) A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;

(ii) Must provide for graduated or income-sensitive repayment; and

(iii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(6) Upon receipt of the proceeds of a loan made under paragraph (h)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(i) Treatment by a lender of borrowers' refunds received from schools. (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly shall provide written notice to the borrower that the holder has received the refund.

(j) Certification on loans to be repaid through consolidation. Within 10 business days after receiving a written request for a certification from a lender under 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.209 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.210 Deferment.

(a) General. (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2) (i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that begins after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary if—

(i) in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under 682.301 when the loan was made; or

(ii) in the case of a Consolidation loan, during any period the borrower was eligible for a deferment under section 428(b)(1)(m).

(4) As a condition for receiving a deferment, the borrower shall request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request and the information and documentation required for the deferment.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of a student deferment for a Stafford or PLUS loan made to a borrower guaranteed by a guaranty agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan made to a borrower for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guaranty agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (r) of this section.

(b) Authorized deferments. (1) Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (c)(4) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) Engaged in an internship of residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) (A) Pregnant;

(B) Caring for his or her newborn child; or

(C) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force. Full-time employment involves at least 30 hours of work a week and it expected to last at least 3 months.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)-(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) Student deferment. (1) Except as provided in paragraph (c)(4) of this section, to document eligibility for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A completed deferment application or certified loan application; and

(ii) A statement, which may be on the deferment application or a loan application, completed by an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a half-time basis; and

(iii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school or other documentation evidencing that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

(2) The lender shall consider a deferment granted on the basis of a certified loan application to cover the period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment.

(3) In the case of an SLS or PLUS borrower, the lender shall treat the certified loan application as sufficient documentation for a student deferment for any outstanding SLS or PLUS loan previously made to the borrower that is held by the lender.

(4) A borrower serving in a medical internship residency program, except for an internship in dentistry, is prohibited from receiving or continuing deferment on a Stafford or SLS loan under paragraph (c) of this section.

(d) Graduate fellowship deferment. (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an

authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) Rehabilitation training program deferment. (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) Temporary total disability deferment. (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in 682.200(b).

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) Dependent's disability deferment. (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) Unemployment deferment. (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels over qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(6) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(1)(ii) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under the Department's regulations.

(i) Military deferment. (1) To qualify for a military deferment, a borrower shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii)(A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) Public Health Service deferment. To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(k) Peace Corps deferment. To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(l) Full-time volunteer service in the ACTION programs. To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(m) Deferment for full-time volunteer service for a tax-exempt organization. To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(n) Internship or residency deferment. (1) To qualify for an internship or residency deferment under paragraphs (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) Parental-leave deferment. (1) To qualify for the parental-leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) NOAA deferment. To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) Targeted teacher deferment. (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q) (5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated

teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q) (5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term school in 682.200(b) does not apply;

(ii) Elementary school means a day or residential school that provides elementary education, as determined under State law;

(iii) Secondary school means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether

the term "secondary school" includes education beyond the twelfth grade;

(iv) Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) Chief State School Officer means the highest ranking educational official for elementary and secondary education for the State;

(vi) School year means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) Teacher shortage area means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) Full-time equivalent means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a pro rata basis corresponding to the percentage of his or her working hours spent in such a position.

(r) Working-mother deferment. (1) To qualify for the working-mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.210 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. Forbearance means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (h) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in 682.202(b).

(b) A lender may grant forbearance if the lender and the borrower or endorser agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree in writing to the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the repayment obligation after default. The terms of the forbearance agreement in this situation must include a new signed repayment obligation.

(e) Except in the case of forbearance of interest payments during a deferment period or a forbearance granted under paragraph (g) of this section, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser by telephone or send a written notice to the borrower or endorser at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period;

(3) For the period beginning when the borrower entered repayment until the first payment due date was established;

(4) For a period as authorized by the Secretary in the event of a national military mobilization or other national emergency; or

(5) For the period prior to the borrower's filing of a bankruptcy petition as provided in 682.402(d).

(g) Upon the written request of the borrower, a lender shall grant forbearance of principal and, unless otherwise indicated by the borrower, interest, in 12-month intervals to a borrower whose deferment received under 682.210(n) has expired until the borrower has completed the internship or residency.

(h) In granting a forbearance under this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.211 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

Note: Section 682.212 amended December 18, 1992, effective February 1, 1993.

682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principle balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that

interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Authority: 20 U.S.C. 1071-1087-2)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: New section 682.214 added December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart C-Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on Stafford loans.

(a) General. The Secretary pays a lender a portion of the interest on a Stafford loan on behalf of a borrower who qualifies under 682.301. This payment is known as interest benefits.

(b) Covered interest. (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) The date the disbursement check that represents a portion of a loan is returned uncashed to the lender, or the 120th day after the date of that disbursement, if—

(A) The check for the disbursement has not been negotiated on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer in accordance with 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty agency.

(c) Interest not covered. The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guaranty agency.

(d) Rate. (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to 3 percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) General. (1) A borrower must demonstrate financial need in accordance with Part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

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(B) Provides subsistence support to its members.

(b) Application for interest benefits. To apply for interest benefits, the student, or the school at the direction of the student, shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) Use of loan proceeds to replace expected family contribution. A borrower may use the amount of an SLS, PLUS, nonsubsidized Stafford loan, State sponsored loan, or private loan program obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.301 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.302 Payment of special allowance on FFEL loans.

(a) General. The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) Eligible loans. (1) Except for nonsubsidized Stafford loans disbursed on or after October 1, 1981, or as provided in paragraphs (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or under 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(c) Rate. (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(d) Termination of special allowance payments on a loan. (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been negotiated on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The 30th day after the date the guaranty agency returns a claim for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day.

(2) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) Special allowance payments for loans financed by proceeds of tax-exempt obligations. (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section; and

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103-14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Note: Section 682.302 amended December 18, 1992, effective February 1, 1993 with exception of (d)(1)(v) and (d)(1)(vii)—effective April 17, 1993.

682.303 [Reserved]

682.304 Methods for computing interest benefit and special allowance.

(a) General. The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) Average daily balance method for interest benefits. (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) Actual accrual method for interest benefits. (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) Average daily balance method for special allowance. (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified

loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: Section 682.304 amended December 18, 1992, effective February 1, 1993.

682.305 Procedures for payment of interest benefits and special allowance.

(a) General. (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under 682.202(c).

(4)(i) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary.

(ii) A lender that makes a loan and any subsequent holder of the loan are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) Penalty interest. (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by—

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under 682.300 through 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) Independent audits. (1) A lender shall arrange for an independent annual compliance audit conducted by a qualified independent organization or person.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and

(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A-133, Audit of Institutions of Higher Education and Other Nonprofit Institutions, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A-133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c)(1) through (c)(2)(iv) of this section.

(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.305 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart D-Administration of the Federal Family Education Loan Programs by a Guaranty Agency

682.400 Agreements between a guaranty agency **and the Secretary.**

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the GSL programs and to receive the various payments and benefits related to that participation.

(b) There are three agreements:

(1) Basic program agreement. In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, and bankruptcy claims paid by the Secretary through the guaranty agency; and

(iii) The guaranty agency may apply for the administrative cost allowance and for the other agreements described in this section.

(2) Federal advances for claim payments agreement. A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) Reinsurance agreement. A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087-1)

Note: Section 682.400 amended December 18, 1992, effective February 1, 1993.

682.401 Basic program agreement.

(a) General. In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) Terms of agreement. In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) Aggregate loan limits. The aggregate guaranteed unpaid principal amount for all Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in 682.204(b), (d), and (f).

(2) Annual loan limits. (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in 682.204(a), (c), and (e).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in 682.204(h).

(3) Duration of borrower eligibility. (i) A student borrower under the Stafford Loan Program or the SLS Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) Borrower responsibilities. (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding FFEL loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(5) School eligibility. A school that has a program participation agreement in place with the Secretary under 682.600 is eligible to participate in the program of the agency except to the extent that—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act or 682.713;

(iii) The school is ineligible under section 435(a)(3) of the Act;

(iv) There is a State constitutional prohibition affecting the school's eligibility;

(v) The school's programs consist of study solely by correspondence; or

(vi) The agency determines that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668.

(6) Lender eligibility. (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(7) Out-of-State schools. The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under 682.404(i)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(8) Out-of-State residents. The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under 682.404(i)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(9) Insurance premiums. (i) Except for a SLS or PLUS loan refinanced under 682.209 (e) or (f), the guaranty agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guaranty agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guaranty agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a loan disbursed in more than one installment, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed 3 percent of the principal balance of the loan.

(v) The guaranty agency shall refund to the lender any insurance premium received for a loan under the circumstances specified in 682.401(b)(9)(vi) (A) and (B).

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a loan disbursed in more than one installment, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if within 120 days of disbursement—

(1) The loan is repaid in full;

(2) The loan check has not been negotiated; or

(3) The loan proceeds disbursed by electronic funds transfer in accordance with 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) Payments for lender referral service. (i) The guaranty agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in and make FFEL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under a qualified lender referral service.

(ii) For purposes of this paragraph, the term qualified lender referral service means a lender referral service offered by a guaranty agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the principal guaranty agency or attending a school in that State and who has sought and been unable to find a lender willing to make a FFEL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) Administrative fee for Consolidation loans. The guaranty agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(12) Administrative fee for refinancing fixed-rate PLUS or SLS loans. The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(13) Guarantee liability. The guaranty agency shall guarantee 100 percent of the unpaid principal balance of each loan guaranteed.

(14) Guaranty agency administration. In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(15) Loan assignment. (i) The guaranty agency shall allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(16) Transfer of guarantees. Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(17) Standards and procedures. (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D and F of this part.

(18) Student status confirmation. (i) The guaranty agency shall establish and use a system and procedures for monitoring the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum—

(A) Transmitting to the school, that according to the guaranty agency's records the student most recently attended, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(B) Reporting to the current holder of the loan within 60 days of the receipt of the completed report from the school any change in the student's enrollment status reported by the school that triggers—

(1) The beginning of the borrower's grace period; or

(2) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(ii) The agency shall use the data elements and report format provided in Appendix B to this part, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

(19) Submission of interest and special allowance information. Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(20) Submission of information for reports. The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by 682.414(b).

(21) Guaranty agency transfer of information. (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency as defined in 682.800(d) shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guaranty agency making the request.

(22) Information of defaults. The guaranty agency shall upon the request of an eligible institution furnish information with respect to students, including the names and addresses of such students, who were enrolled at the eligible institution and who are in default on the repayment of any loan guaranteed by that agency.

(c)(1) Lender of last resort. The guaranty agency shall ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender of last resort in the State in which it is the principal guaranty agency, as defined in 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who satisfies the lender's eligibility requirements and—

(i) Qualifies for interest benefits, pursuant to 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) Review of forms and procedures. (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency shall use a common application form, promissory note, and other common forms approved by the Secretary.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) Prohibited inducements. A guaranty agency may not—

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: new paragraph (b)(14) added July 19, 1991, effective September 3, 1991. Section 682.401 amended December 18, 1992, effective February 19, 1993, except for (b)(17)—effective April 17, 1993, (b)(18)—effective June 19, 1993, and (d)(3)—effective on approval of forms. OMB control number amended February 19, 1993, effective February 19, 1993.

682.402 Death, disability, and bankruptcy payments.

(a) General. (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments in the event of default.

(b) Death. (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled.

(2) In determining that a borrower has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be canceled only if the guaranty agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 30 days, the lender shall attempt diligently to obtain documentation verifying the borrower's death. If, despite diligent attempts, the lender is not able to confirm the borrower's death within 30 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) Total and permanent disability. (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. In the case of a consolidation loan, the condition must not have existed prior to the time the borrower applied for each of the underlying loans, unless the condition substantially deteriorates, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly shall request that the borrower or the borrower's representative submit on a form provided or approved by the Secretary a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with 682.202(b), any interest accrued and not paid during that period.

(d) Bankruptcy—(1) General. If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) Notice of bankruptcy filing. The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) Suspension of collection activity. If a lender is notified pursuant to paragraph (d)(2) of this section that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under Chapters 12 or 13, against any co-maker or endorser.

(4) Proof of claim. The lender shall file a proof of claim with the bankruptcy court within—

(i) 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under Chapter 7, the notice states that the borrower has no assets; or

(ii) 30 days after the lender receives a notice from the court stating that a Chapter 7 no-asset case has been converted to an asset case.

(5) Filing of bankruptcy claim with the guaranty agency. (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under Chapters 7 or 11 of the Bankruptcy Code and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (d)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) Claim procedures for a loan by a lender—(1) Documentation. A lender shall provide the guaranty agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(2) Filing deadlines. A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (d)(2) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(f) Payment of death, disability, and bankruptcy claims by the guaranty agency—(1) General. (i) The guaranty agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraph (f) of this section, not later than 45 days after the claim was filed by the lender.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (g) of this section to oppose the discharge of the loan by the bankruptcy court.

(2) Amount of loss to be paid on a claim. (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with 682.202(b).

(3) Payment of interest. If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) Guaranty agency participation in bankruptcy proceedings—(1) Undue hardship claims. (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guaranty agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment more than seven years. The guaranty agency shall take the following actions with regard to a loan that was in repayment for at least seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under Chapter 11, 12, or 13 was filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

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(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrates entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(3) Response by guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment less than seven years. The guaranty agency shall take the following actions with regard to a loan that was in repayment for less than seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under chapter 11, 12, or 13 was filed:

(i) If the debtor proposes a plan that is expected to end less than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(ii) If the debtor proposes a plan that is expected to end more than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall take the actions required under paragraph (h)(2) of this section.

(h) Mandatory repurchase by lender. (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8)(B) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11 in a proceeding begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) on grounds of undue hardship.

(2) The lender may capitalize past-due interest accrued on a loan repurchased under this paragraph.

(i) Claims for reimbursement from the Secretary on loans held by guarantee agencies. (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) with respect to a proceeding initiated under chapter 7 or chapter 11 begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, or bankruptcy claim in an amount determined under paragraph (i)(3) of this section on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b)-(d) of this section. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b)-(d) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or in the case of a PLUS Program loan each of the co-makers) has died, become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or has filed the petition for relief in bankruptcy within the maximum repayment period described in 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency pursuant to 682.410(b)(6)(x);

(v) The guaranty agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to 682.410(b)(6)(x), until the borrower (or in the case of a PLUS loan each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(iv) In the case of a bankruptcy claim, the guaranty agency has complied with the requirements of paragraph (g) of this section.

(3)(i) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guaranty agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 bankruptcy petition, or had the loan discharged in bankruptcy until the Secretary authorizes payment; or

(B) 60 days.

(ii) In addition, the Secretary pays the guaranty agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) Payments received after the Secretary's payment of a death, disability, or bankruptcy claim. If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall remit 100 percent of these payments to the Secretary.

(k) Applicable suspension of the repayment period. For purposes of this section and 11 U.S.C. 523(a)(8)(B) with respect to loans guaranteed under the FFEL programs, an applicable suspension of the repayment period—

(1) Includes any period, including a period of deferment, during which the lender, at the request of the borrower, does not require the borrower to make payments on the loan;

(2) Begins on the date on which the borrower qualifies for the requested deferment or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended; and

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.402 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guaranty agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422 (c) and (d) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

682.404 Federal reinsurance agreement.

(a) General. (1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) Losses means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) Preclaims assistance means collection assistance provided to the lender by the guaranty agency that includes collection activities that are comparable in intensiveness to the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the agency of at least 3 collection activities, including at least 1 letter to the borrower designed to encourage the borrower to begin or resume repayment; and

(iii) Supplemental preclaims assistance means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency $50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not—

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were—

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) Reinsurance rate. (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals 90 percent of its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guaranty agency reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year is 80 percent of its losses.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under 682.412(e);

(ii) Under a policy established by the agency that is consistent with 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) of this section, for a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary may pay 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation.

(5) For purposes of this section, amount of loans in repayment means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims—

(1) Paid under 682.412(e);

(2) Paid under a policy established by the agency that is consistent with 682.509(a)(1); or

(3) Paid at the direction of the Secretary.

(c) Submission of reinsurance rate base data. The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the quarterly report is due until the guaranty agency submits a complete and accurate report.

(d) Reinsurance fee. (1) Except for loans made under 682.209(e), (f) and (h), a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) Initiation or extension of agreements. In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by 682.410(b) (6) or (7), and 682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) Application of borrower payments. Payments made to a guaranty agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) Federal share of borrower payments. (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, the Secretary's equitable share means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) Nondiscrimination. (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(i) Other terms. The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

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(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.404 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.405 [Reserved]

682.406 Conditions of reinsurance coverage.

(a) A guaranty agency is entitled to reinsurance payments on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with 682.207(b)(1)(ii)(B) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender, which must take place no earlier than 90 days following default in the case of a loan payable in monthly installments, or no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with 682.410(b)(6) or (7);

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees; and

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of 682.409.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in Appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.406 amended December 18, 1992, effective February 19, 1993, except for (a)(3)—effective for loans entering repayment on or after February 19, 1993, and (a)(6) and (a)(8)—effective for loans on which first date of delinquency is on or after April 17, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.407 Administrative cost allowance for guaranty agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guaranty agency having a basic program agreement.

(2) The administrative cost allowance paid to a guaranty agency for any fiscal year equals 1 percent of the total principal amount of loans, other than Consolidation loans, guaranteed by the agency during that fiscal year.

(b)(1) To receive an administrative cost allowance payment, the guaranty agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with 682.410(b)(1), to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit conducted in accordance with 682.410(b)(1) and submitted in a format and containing information required by the Secretary;

(v) Assurances that the guaranty agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) An estimate of the total amount of new FFEL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in 682.401(b).

(3) The application for an administrative cost allowance by a guaranty agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guaranty agency with respect to the assurances contained in the application.

(c)(1) A guaranty agency may use the administrative cost allowance to meet only administrative costs related to the FFEL programs.

(2) A guaranty agency may not use the administrative cost allowance to meet costs—

(i) For which the agency has been or will be reimbursed from the 30 percent retention of collections permitted under 682.404(g)(2)(ii); or

(ii) For which the agency has been or will be reimbursed from a source other than the payment made under this section.

(d) The Secretary pays an administrative cost allowance on a loan only to the guaranty agency that originally guaranteed the loan, even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.407 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.408 Loan disbursement through an escrow agent.

(a) General. (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford, SLS, and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower's school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) Disbursement by the lender. Subject to 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) Transmittal of FFEL loan proceeds by the escrow agent. (1) The escrow agent shall transmit Stafford and SLS loan proceeds received from a lender under this section to a school in accordance with the requirements of 682.207(b)(1)(ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(2) The escrow agent shall transmit PLUS loan proceeds received from a lender under this section to a borrower in accordance with the requirements of 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) Return of untransmitted proceeds. The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

Note: Section 682.408 amended December 18, 1992, effective February 1, 1993.

682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary may direct a guaranty agency to assign to the Secretary any loan held by the agency on which the agency seeks, or has received, payment under 682.402(d), 682.402(i), or 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guaranty agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (e.g., computer tape) and in the format specified by the Secretary.

(2) The guaranty agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in 682.414(a)(1)(ii)(D).

(5) The agency may submit certified copies of required documents in lieu of originals if no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.409 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.410 Fiscal, administrative, and enforcement requirements.

(a) Fiscal requirements—(1) Reserve fund assets. The guaranty agency shall establish and maintain a reserve fund to be used solely for the FFEL program to which the guaranty agency shall credit—

(i) Federal advances obtained and matching funds required under section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under section 422(c) of the Act;

(iv) Funds received by the guaranty agency as loan insurance premiums;

(v) Administrative cost allowances received by the guaranty agency under 682.407;

(vi) Funds received by the guaranty agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on FFEL loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Investment earnings on the reserve fund.

(2) Uses of reserve fund assets. Except as provided in paragraphs (a)(3)-(a)(5) of this section, a guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Pay default claims;

(ii) Pay death, disability, and bankruptcy claims;

(iii) Refund overpayments of insurance premiums;

(iv) Pay to the Secretary the Secretary's equitable share of borrower payments;

(v) Repay advances and other funds owed to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) Special rule for use of certain reserve fund assets. (i) Except as provided in paragraph (a)(4) of this section, a guaranty agency also may use funds received as insurance premiums, administrative cost allowances, amounts collected on FFEL loans, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for the proper administration of the guaranty agency's FFEL loan guarantee activities.

(ii) The guaranty agency shall use funds received as Federal advances under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guaranty agency shall account separately for the funds described in paragraph (a)(3)(i) of this section.

(4) The guaranty agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guaranty agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to FFEL program guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds or revenue equal to the percentage of the original development cost or purchase price of the asset paid with the reserve fund monies; and

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its FFEL loan guarantee activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) Administrative requirements—(1) Independent audits. The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A-133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

(A) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(B) The audit must examine the agency's financial management of its FFEL program activities.

(C) The audit must be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) Collection charges. Whether or not provided for in the borrower's promissory note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees,

collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) Interest charged by guaranty agencies. The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) Capitalization of unpaid interest. The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) Credit bureau reports. (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(iii) of this section, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guaranty agency, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, shall provide the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20-30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to credit bureaus and provide deadlines and method for requesting this relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement

actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) Collection efforts on defaulted loans. (i) The guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii)-(xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii)-(vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii)-(xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or on multiple loans for a borrower, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in activities related to administrative wage garnishment, or is receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(5)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraphs (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraphs (b)(6)(iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6)(iii)-(vii) of this section but shall diligently attempt to collect the loan for 60-day following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(6)(iv)-(ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) 1-45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section; and

(B) Diligently attempt to contact the borrower by telephone, as defined in 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand payment of the loan.

(iv) 46-180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in 682.411(1) (with references to "the lender" understood to mean "the agency") to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately begin repayment of the loan and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan.

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term gap in collection activity means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(1) The date the agency paid a default claim to the lender thereon;

(2) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(3) The day on which the agency completes a collection activity as defined in 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(1) The day on which the agency receives the first subsequent payment;

(2) The day on which the agency begins the first subsequent collection activity as defined in (1) through (3) (with references to the "lender" understood to mean "the agency"); or

(3) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) 181-545 days:

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(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6)(iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower fewer than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(1) The cost of litigation would exceed the likely recovery if litigation was begun; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion there of.

(viii)(A) If as a result of a determination made pursuant to paragraph (B)(6)(vii)(D)(2) of this section the agency does not institute a civil suit against the borrower for repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt and that the cost of litigation would not exceed the amount likely to be obtained if litigation were begun, then, if subsequent collection efforts are not successful, the agency, no later than 60 days after the determination, shall institute a civil suit against the borrower for repayment of the loan.

(C) The guaranty agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall attempt diligently to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency, not later than 60 days thereafter, shall notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency, within 30 days thereafter, shall proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6) (viii) and (ix) of this section only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii)-(x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon unless the agency—

(A) Determines and documents in the borrower's file that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were begun, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Previously has discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(x) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(D) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and State motor vehicle departments.

(7) Alternative collection procedures for defaulted loans. (i) A guaranty agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii)-(vi) of this section. The regulations in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii)-(v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7)(iii)-(vi) of this section but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(7)(iii)-(vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) 1-30 days: During this period the agency shall send to the borrower the written notice described in paragraph (b)(5)(ii) of this section.

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(iv)(A) 31-180 days: During this period the guaranty agency shall attempt diligently to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(1) Be compensated for its services on all FFEL loans referred by the agency solely on a contingency fee basis;

(2) Be one of at least two collection contractors simultaneously providing collection services to the agency on FFEL loans under a competitive system that the agency has established and that includes the periodic assessment by the agency of the performance of the competing contractors and periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70 percent of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7)(i)-(iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) Special conditions for agency payment of a claim. (i) A guaranty agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guaranty agency shall—

(A) Perform the loan servicing functions required of a lender under 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan, exercise due diligence in accordance with 682.411 in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) Preemption of State law. The provisions of paragraphs (b) (2), (5), (6), and (7) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(c) Enforcement requirements. A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of FFEL loans made or held by the lender and guaranteed by the agency in the preceding year—

(1) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(2) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(3) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor as defined in 682.800(d), and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 668.15 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(A)-(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and

monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1091a, 1099)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (c)(1)(iii) amended July 19, 1991, effective September 2, 1991. Section 682.410 amended December 18, 1992, effective February 19, 1993, except for (b)(4)—effective April 17, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.411 Due diligence by lenders in the collection of guaranty agency loans.

(a) General. In the event of delinquency on a FFEL programs loan, the lender shall engage in at least the collection efforts described in paragraphs (c)-(1) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(b) Delinquency. For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment which is not later made. The due date of the first payment is established by the lender but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment which is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(c) 1-10 days delinquent: Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) 11-180 days delinquent (11-240 days delinquent for a loan repayable in installments less frequent than

monthly): (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur before and another one must occur after the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone if the loan is 91-120 days delinquent (121-180 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment of forbearance.

(4) A lender need not attempt to contact by telephone any borrower—

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(A) A payment on the loan;

(B) A correct address for the borrower;

(C) A dishonored check received from the drawee as a payment on the loan; or

(D) The expiration of an authorized deferment or forbearance.

(5) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) Final demand. On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(f) Collection procedures when borrower's telephone number is not available. Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (f)(1) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made, unless the borrower's number is obtained before the 120th day of delinquency (the 150th day for loans payable repayable in installments less frequent than monthly).

(g) Skip-tracing. (1) Unless the letter specified under paragraph (e) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender shall begin to diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, making a diligent effort to contact each endorser, relative, reference, and individual and entity identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator identified on the loan application. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c)-(e) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c)-(e) and (k) of this section unless it receives communication indicating the borrower's address before the 151st day of delinquency (the 211th day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (l)(1)(A) or (B) of this section (with references to "the borrower" understood to mean endorser, reference, relative, individual or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(h) Preclaims assistance. The lender shall request preclaims assistance from the agency that guaranteed the loan within 10 days before or after the date established by the agency that assistance is first available from the agency.

(i) Gap in collection activity. For purposes of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity; or

(iii) Default.

(j) Transfer. For purposes of this section, the term "transfer" with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) Collection activity. For purposes of this section, the term "collection activity" with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraphs (c), (d), or (e) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (g) of this section, to locate a borrower whose correct address is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(l) "Diligent effort" for telephone contact. (1) For purposes of this section, the term "diligent effort" with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and a diligent effort to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (l)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication indicating the borrower's current address before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (l)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative or individual identified on the borrower's most recent loan application.

(m) Due diligence for endorsers. (1) During the delinquency period the lender shall—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan current before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (m)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of

normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(n) Preemption of State law. The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.411 amended December 18, 1992, effective for loans that become delinquent on or after April 17, 1993.

682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of 682.411(e) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all special allowance paid by the Secretary thereon up through the most recently ended quarter.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.412 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received on a loan guaranteed by a guaranty agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in 682.406(a)(1)-(a)(6), (a)(9), and (a)(12);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period in which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under 682.302(d).

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the agency failed to meet the requirements of 682.406(a).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate 682.206(f)(1).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guaranty agency. References to "the institution" in those regulations shall be understood to mean the lender or guaranty agency, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or a lender.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the FFEL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender or guaranty agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20-30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)-(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1, 1097)

Note: Section 682.413 amended December 18, 1992, effective February 1, 1993.

682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) Records. (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for preclaims and supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(4)(i) A guaranty agency or lender may store the records specified in paragraphs (a)(3)(ii)(C)-(K) of this section on microfilm, optical disk, or other machine readable format.

(ii) A lender or guaranty agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is acceptable under State law that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guaranty agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) Reports. A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) Inspection requirements. Upon request, a guarantee agency or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information. In providing reasonable access, the agency shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of agency representatives; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the agency.

(3) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to 682.401(b) (19) and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

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Subpart E-Federal Guaranteed Student Loan Programs

682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078-1, 1078-2, 1078-3, 1082)

682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) General. Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under 682.512, accrued interest.

(b) Special provisions for State lenders. (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any

fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of 682.412(e) or 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin and remains in deferment status; or

(D) The Secretary has paid a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under 682.412(e) or 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1082)

682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d) of the Act and the definition of "lender" in 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial or grant the lender an opportunity to appeal if the lender submits its application within six months of a previous denial.

(Authority: 30 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the agreement and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may on a school-by-school basis impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students or to parents of students in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and of the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C., 1078-1, 1078-2, 1078-3, 1079, 1082)

682.505 Insurance premium.

(a) General. The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under 682.209(f).

(b) Rate. The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

FISL loans-insurance premium calculation. (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) PLUS and SLS Loans-insurance premium calculation. The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) Collection from lenders. (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. However, the Secretary may excuse late payment of an insurance premium and reinstate the guarantee coverage on a loan if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

Collection from borrowers. The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) Refund provisions. The insurance premium is not refundable by the Secretary and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1082)

682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078-1, 1078-2, 1079, 1082, 1089)

682.507 Due diligence in collecting a loan.

(a) General. (1) Except as provided in paragraph (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in 682.411 in collecting a Federal GSL loan.

(b) Initial delinquency. If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period that started on the date of delinquency for loans repayable in installments less frequent than monthly.

(c) Skip-tracing assistance. (1) If a lender does not know the borrower's current address, the lender promptly shall attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender promptly shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) Preclaims assistance. When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) Final demand letter. A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) Litigation. (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that unless the borrower or endorser makes payments sufficient to bring the account out of default the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges, and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1081, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.507 amended December 18, 1992, effective February 19, 1993.

682.508 Assignment of a loan.

(a) General. A Federal GSL loan may not be assigned except to another eligible lender. For the purpose of this

paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(b)(1) Procedure. If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(c) The Secretary's approval. The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under 682.503.

(d) Warranty. (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may cover only reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.508 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that while the student was enrolled at the school the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not as a result of a claim filed with the Secretary under this section report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in 682.402(a)-(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guaranty agency" in 682.402(d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1082, 1087)

682.511 Procedures for filing a claim.

(a) Filing a claim application. (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in 682.412(e)(2) or 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) Documentation required for claims. (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument.

(iv) A payment history, as described in 682.414(a)(3)(ii)(I).

(v) A collection history, as described in 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter if required by 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is

relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department for skip-tracing assistance under 682.507(c) and for preclaims assistance under 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in 682.402(e)(1) mean the Secretary.

(c) Assignment of note. The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) Bankruptcy subsequent to default. If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) Claim filing deadlines. To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) Default claims. Unless the lender has already filed suit against the borrower in accordance with 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed by a lender pursuant to 682.412(e)(2), as directed in 682.208(f)(2), the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to 682.411(e) if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) Death, total and permanent disability, or bankruptcy claims. The claim filing deadlines in 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in 682.402(e)(2) mean the Secretary.

(3) Special condition claims. In the case of a special condition claim filed pursuant to 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to 682.509(a)(2).

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.511 amended February 18, 1992, effective February 19, 1993.

682.512 Determination of amount payable on a claim.

(a) Default claims. (1) Amount payable. The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by 682.202(b).

(2) Payment of interest. If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) Recovery of outstanding debts. The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) Death, total and permanent disability, or bankruptcy claims. (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with 682.402(f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with 682.402(f)(2) and (f)(3).

(3) For purposes of this section, references to the "guaranty agency" in 682.402(f)(3) mean the Secretary.

(c) Special rules for a loan acquired by assignment. If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in 682.509, the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in 682.511(b).

(b) Except as provided in 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082)

682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) Records. (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in 682.414(a)(3)(ii)(C)-(K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) Reports. A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) Inspections. Upon request, a lender or its agent shall cooperate with the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.515 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart F-Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the FFEL programs.

(a) General. Participation of a school in the FFEL programs means that the school's students are eligible to receive FFEL loans. To participate in the FFEL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(b) Program participation agreement. The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) Appeal of denial or limitations. (1) If the Secretary denies a request for an agreement or approves only limited participation in the FFEL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity to meet with a designated Department official to appeal that decision.

(2) However, the Secretary does not grant an opportunity for appeal or give reasons for denying the participation or approving only the limited participation of a school if the school submits its request within six months of a previous denial or limited approval.

(d)(1) A private school that does not qualify as an institution of higher education under 34 CFR 600.4, and that offers an undergraduate nonbaccalaureate program designed to prepare students for a particular vocational, trade, or career field, shall, as a condition for participation in the Federal Stafford, Federal PLUS, and Federal Supplemental Loans for Students (SLS) programs, have in effect at all times a plan, containing one or more of the elements in paragraphs (d)(2) of this section, that provides for the equitable treatment of enrolled students and the Secretary in the event that the school terminates teaching activities in a particular program of study before the students complete the program of study.

(2) A school is considered to have a plan in effect that meets the requirements of this section only if its plan includes one or more of the following elements:

(i) Coverage under a State-administered tuition-recovery fund, or a State-approved tuition recovery plan that is subject to State audit or review by the State legislature or administrators and is backed by the full faith and credit of the State, that provides for payment of a refund from the fund directly to the lender that is at least as large as a *pro rata* refund, as defined in §682.606(c)(1) of the tuition, fees, and other institutional charges assessed an enrolled student on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan was made for the period of enrollment during which the school terminated teaching activities in a particular program of study.

(ii) A surety bond or letter of credit payable on demand to the Secretary posted by the school or another entity on behalf of the school in an amount equal to at least 50 percent of one academic year's tuition, fees, and other charges for all enrolled students on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan will be made for the current period of enrollment at that school and that provides for the payment of a refund to lenders that is at least as large as a *pro rata* refund as defined in §682.606(c)(1).

(iii) Coverage under a program and fund administered by the school's accrediting commission that includes—

(A) Written procedures for arranging a teachout, including the provisions in paragraph (d)(2)(iv) of this section for teachouts performed by a participating school under a teachout agreement, for enrolled students on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan has been made who are in attendance at the school when the school terminates teaching activities in a particular program of study; and

(B) If no such teachout is provided when the school terminates teaching activities in a particular program of study, the payment of a refund at least as large as *pro rata* refund as defined in §682.606(c)(1) to the lender for each enrolled student on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan was made for the period of enrollment during which the school terminated teaching activities in a particular program of study.

(iv) A teachout agreement with one or more other participating schools (the teachout school or schools) offering similar educational programs and with which the original school has no business connection that contains the following provisions:

(A) Each teachout school shall agree that, if the original school terminates its teaching activities in a particular program of study in which it enrolls a student to whom or on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan is made for attendance at the original school, the teachout school will offer each such student enrolled in that course of study at the original school when the teaching activities are terminated a reasonable opportunity to promptly resume and complete his or her course of study, or a substantially similar course of study, in the same geographic area as that in which the original school provided the course of study.

(B) The teachout school shall agree to provide this opportunity without additional charge to the student, except that the teachout school may charge the student for periods of enrollment that the student is required to undertake to complete the course of study undertaken at the original school, as the student incurs those charges, up to the amount not yet paid by the student, that the original school would have been entitled to collect for those periods of enrollment from the student had the original school not terminated

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teaching activities in the program of study prior to the student's completion of the program of study.

(C) The original school shall agree that, in the event a teachout becomes necessary, it will arrange, in a timely manner, for individual notice to each student of the availability of the teachout and diligently advertise the availability of the teachout. Such arrangements may provide that the teachout notices be sent by the teachout school.

(v) Coverage under a "pooled risk" arrangement administered by the school's accrediting commission that ensures that a refund will be paid directly to the lender that is at least as large as a *pro rata* refund as defined in §682.606(c)(1) for each enrolled student on whose behalf a Federal Stafford, Federal SLS, or Federal PLUS loan was made for the period of enrollment during which the school terminates teaching activities in a particular program of study.

(3) A school shall submit written evidence acceptable to the Secretary, its accrediting commission, and its principal guarantee agency that it has been selected and adopted an acceptable closure plan containing one or more of the elements under this paragraph. A school that selects the teachout alternative under paragraph (d)(2)(iv) of this section shall submit, as required written evidence of the teachout arrangement, a copy of its catalog or the equivalent and of its enrollment contract, both including a brief description of the teachout plan, and shall make details of such arrangement available to students and prospective students upon request.

(e) Foreign schools. A foreign school is required to comply with the provisions of the regulations except to the extent that the Secretary states in these regulations or in other official publications or documents that those schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.600 amended December 18, 1992, effective February 1, 1993. Paragraph (d) redesignated as (e) and new paragraph (d) added January 7, 1993, effective April 13, 1993. OMB control number added April 13, 1993.

682.601 Rules for a school that makes or originates loans.

(a) General. To make or originate loans under the FFEL programs—

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school;

(2) The school may not be a correspondence school;

(3) The school may not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis unless the Secretary waives this rule pursuant to paragraph (c) of this section;

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender; and

(5)(i) The school may not make or originate a loan for an academic period to a student described in paragraph (a)(4) of this section until the student provides the school with evidence under paragraph (b) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set paragraph (a)(5)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (b) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(b) Establishing a loan denial by a commercial lender. (1) To verify that a borrower has sought and been denied a loan from a commercial lender pursuant to paragraph (a)(4) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(c) Waiver of the 50 percent lending limit. A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(1) The extent to which the school provides and expects to continue providing educational opportunities to

economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll or continue their enrollment at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers educational programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.601 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.602 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with 682.201 and 682.401(b) (1) and (2);

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought;

(4) For a Stafford loan, the student's eligibility for interest benefits, based on information provided by the student upon which the school can rely and as determined in accordance with 682.301;

(5) For a Stafford or SLS loan, the schedule for disbursement of the loan proceeds; and

(6) The student's SLS loan amount.

(c) Pursuant to 34 CFR 668.15(i), except for a student who has previously borrowed an SLS loan for a program of study at the school and who seeks an SLS loan to complete the program of study at the school, a school may not certify an SLS loan application for an undergraduate student after the school receives notice from the Secretary that its fiscal year default rate is 30 percent or more.

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(e) A school may refuse to certify a Stafford, SLS, or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(1) The determination is made on a case-by-case basis;

(2) The documentation supporting the determination is retained in the student's file; and

(3) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(f)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.2, (See paragraphs (b) and (c) of the definition of "Academic year.")

(2) The maximum period for which a school may certify a loan application is generally an academic year, as defined by 34 CFR 668.2, except that a guaranty agency may allow schools to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under 682.401(b)(2)(ii).

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (c) amended July 19, 1991, effective September 2, 1991. Section 682.603 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) Purpose. This section establishes rules governing a school's processing of a borrower's Stafford, PLUS, or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) General. (1) Except as provided in 682.207(b)(1)(v)(C)(1), the proceeds of a Stafford, SLS or PLUS loan disbursed using electronic transfer of funds must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, continuously has maintained eligibility in accordance with the provisions of 682.201, from the beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirement of paragraph (d)(3) of this section.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) Processing of the loan proceeds by the school. (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended and then follow the procedures in paragraph (c) (2) of this section.

(2)(i) Except as provided in 682.207(b)(1)(v)(C)(1), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf, and, after the student has registered, deliver it to the student subject to paragraph

(d)(2) of this section, within 45 days of the school's receipt of the check; or

(B) Obtain the student borrower's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school on behalf of a borrower in accordance with 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL program loan to be made, and after the student has registered either—

(i) Deliver the proceeds to the student borrower subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(2) of this section not later than 45 days after the school's receipt of the funds.

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in 682.605(c).

(5) A school may not release the first installment of a Stafford or SLS loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study.

(d) Applying the loan proceeds. (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guaranty agency, the Secretary, and the student, may hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a loan disbursed in more than one installment, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, or does not begin attendance on a delayed basis as provided in 682.604(b)(2)(ii), the school shall return the proceeds to the lender no later than 30 days after the first day of that period of enrollment.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in 682.607(c) shall notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) Processing a late disbursement. (1) For the purpose of this paragraph, a disbursement is late if the school receives the borrower's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school shall follow the procedures described in paragraphs (e)(3)-(4) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under 682.604(c)(5)(i); or

(ii) Deliver the proceeds of a late second or subsequent disbursement of a Stafford or SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended.

(iii) Deliver to a borrower any portion of the proceeds of a late disbursement that under 34 CFR Part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section and the lender or guaranty agency has informed the school that it prohibits a late disbursement as permitted by 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 60 days after the earlier of the dates described in paragraph (e)(1) of this section, if the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by 682.207(d)(2)(i), and if the total amount of the disbursement and all prior disbursements on the loan do not exceed that portion of the student's documented educational charges for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's documented educational charges, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redisburse funds for the borrower's documented educational charges incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(f) Initial counseling. (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Stafford and SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) Exit counseling. (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS Program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(h) Treatment of excess loan proceeds. Except in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's SLS, PLUS, nonsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement—

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender only the portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.604 amended December 18, 1992, effective February 19, 1993.

682.605 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under 682.607.

(b) The withdrawal date. (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under 682.602. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)-(b)(3) of this section.

(c) Leaves of absence. A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.205 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.606 Refund policy.

(a) General. (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board, and other charges to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student; if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student before the student's enrollment and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS program loans under 34 CFR part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) Fair and equitable refund policy. A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in appendix A to this part or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its cohort default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the pro rata refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the beginning of the student's program.

(c)(1) Pro rata refund, as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks that make up the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of those lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school could reissue to another student be returned by a student once the school determines that the student has withdrawn if the school makes a written request for the return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing before enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (b)(2) amended July 19, 1991, effective September 2, 1991. Section 682.606 amended December 18, 1992, effective February 19, 1993.

682.607 Payment of a refund to a lender.

(a) General. By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to a lender on behalf of that student.

(b) Allocation of refund. In determining the portion of a student's refund for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) Timely payment. A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under 682.605(b)(1)-(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

Note: Section 682.607 amended December 18, 1992, effective February 1, 1993.

682.608 Termination of a school's lending eligibility.

(a) General. The Secretary may terminate a school's eligibility to make loans under this part if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) The 15 percent limit. (1) The Secretary may terminate a school's eligibility to make loans if at the end of each of the 2 most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section as follows:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all FFEL loans made by the school whether the loans are held by the school or by a subsequent holder.

(c) Exception based on hardship. The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide educational opportunities to economically disadvantaged students as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll or continue their enrollment at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers educational programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) Termination procedures. (1) The Secretary notifies the school of the proposed termination of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed date the termination becomes effective; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) Effects of termination. A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) Schools under the same ownership. If a school makes loans to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085)

682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary also may require a school to purchase from the holder of a FFEL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation.

(Authority: 20 U.S.C. 1077, 1078 , 1078-1, 1078-2, 1082, 1094)

Note: Section 682.609 amended December 18, 1992, effective February 1, 1993.

682.610 Administrative and fiscal requirements for participating schools.

(a) General. Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) Loan record requirements. In addition to records required by 34 CFR part 668, for each Stafford, SLS, and PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender which can, upon request, produce a hard copy record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with 682.200;

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under 682.301, the data used to determine the student's expected family contribution and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check;

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(iv) For loans delivered by electronic funds transfer, a copy of the student's written authorization required under 682.604(c)(3) to transfer the initial and subsequent disbursements of each FFEL program loan;

(10) The student's job placement, if known; and

(11) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) Student status confirmation reports. A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(d) Record retention requirements. Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600 for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(e) Inspection requirements. Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, any guaranty agency, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining

relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) Information sharing. (1) Upon request of the Secretary, a lender, or a guaranty agency, a school promptly shall provide a lender or guaranty agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.610 amended December 18, 1992, effective February 19, 1993.

Subpart G-Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program as well as to lenders that participate in the Federal FFEL programs. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under sections 432 (h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section 682.700 amended December 18, 1992, effective February 1, 1993.

682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification: The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guaranty agency.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time—

(a) By a guaranty agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section 682.701 amended December 18, 1992, effective February 1, 1993.

682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities or

rights to benefits and claim payments that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the FFEL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in 682.709.

(c) After the date the termination of a lender's eligibility becomes effective, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guaranty agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to withhold payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The date the action becomes effective is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

682.705 Suspension proceedings.

(a) Scope. (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) Notice. (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed date if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) Hearing. (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section 682.705 amended December 18, 1992, effective February 1, 1993.

682.706 Limitation or termination proceedings.

(a) Notice. (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) Hearing. (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the date the limitation or termination becomes effective.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender or designated Department official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of or pled nolo contendere or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section 682.706 amended December 18, 1992, effective February 1, 1993.

682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with 682.706(b)(9)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section 682.707 amended December 18, 1992, effective February 1, 1993.

682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

Note: Section 682.709 amended December 18, 1992, effective February 1, 1993.

682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

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(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.711 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guaranty agency's action is final, e.g, the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.712 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to—

(1) A review of the written record of the agency's proceedings; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.713 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart H-Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(i) The Plan for Doing Business of the Authority that issued the obligation; and

(ii) The justification of need for the obligation if the obligation was issued after August 14, 1983; or

(2) The Plan for Doing Business of the Authority that issued the obligations has been approved by the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guaranty agency for the State.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (a)(1) of this section from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term principal guaranty agency means—

(1) The guaranty agency in the State with which the Secretary has signed a Basic Program Agreement under 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Note: Section 682.800 amended December 18, 1992, effective February 1, 1993.

682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(d) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of or who seek loans for a student to attend a school within the service area of the Authority; and

(e) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the FFEL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: Section 682.801 amended December 18, 1992, effective February 1, 1993. Paragraph (e) amended January 12, 1994, effective February 1, 1993.

682.802 Submission of Plan for approval-required documentation.

An Authority shall submit with or include in each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of the loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the FFEL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and

secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.802 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.803 Amendments to Plan for Doing Business.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan that had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to 682.802 is revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section 682.803 amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

682.804 Failure to comply with Plan for Doing Business.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: Section 682.805 amended December 18, 1992, effective February 1, 1993.

682.806-682.829 [Reserved]

682.830 Audit standards.

(a) An Authority that is a governmental entity must be audited regarding its lending and loan purchasing program for compliance with its Plan and the provisions of 682.801 in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(b) An Authority that is a nonprofit organization must undergo an audit of its lending and loan purchasing program for compliance with its Plan and the provisions of 682.801—

(1) Conducted in accordance with OMB Circular A-133 and any supplementary compliance guidelines issued by OMB and the Secretary; or

(2) If the Authority qualifies to submit a program-specific audit under criteria in OMB Circular A-133 and chooses to have such an audit performed, conducted in accordance with standards issued by the General Accounting Office (GAO) publication, Government Auditing Standards, and by the Office of Inspector General of the Department contained in the applicable audit guide.

(c) The audit must be conducted annually and the audit report must be submitted within 30 days of the completion of the audit report but no later than six months after the close of the audit period.

(d) Audits must be submitted to the regional office of the Office of Inspector General of the Department, to the Governor who approved the Plan of the Authority, and to the principal guaranty agency consulted by the Governor in approving that Plan.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: Section 682.830 amended December 18, 1992, effective February 1, 1993.

682.831-682.839 [Reserved]

682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) For an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the FFEL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: Section 682.840 amended December 18, 1992, effective February 1, 1993.

Appendix A-Standards for Acceptable Refund Policies by Participating Schools

For purposes of §682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B-Student Status Confirmation Report

This appendix sets forth the model format and data elements for guarantee agencies to use in implementing a manual or automated Student Status Confirmation Report system as required by §682.401(b)(18).

Student Status Confirmation Report

DATE: MM/DD/YY GUARANTOR/INSTITUTION CODE: (must accommodate eight numeric characters)

GUARANTOR/INSTITUTION NAME:

SOCIAL SECURITY NUMBER NAME

PERMANENT ADDRESS

CORRECTION CORRECTION

CORRECTION

*STATUS EFFECTIVE DATE

ANTICIPATED GRADUATION DATE

CORRECTION

*The valid enrollment status codes are as follows:

F=Full-time

H=Half-time or more but less than full-time.

L=Less than half-time. This code is used to specify students enrolled less than half-time.

X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.

Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.

D=Deceased

A=Approved leave of absence

G=Graduated

W=Withdrawn

COMPLETED BY:

NAME

TITLE

TELEPHONE NUMBER

CERTIFICATION DATE

The following definitions apply to the SSCR data elements.

Data element	Definition
Date MM/DD/YY	Date report is run and considered to be issued to school
Social security number	Valid 9-digit SSN assigned by Social Security Administration to student borrower or student on whose behalf a PLUS loan was borrowed.
Name	Last name, first name and middle initial of student borrower or student on whose behalf a PLUS loan was borrowed
Address	Last known permanent address of student
Anticipated graduation date	Date recorded on agency's system. Please note any corrections to this date.
Effective date	Effective date of status reported, as follows: Full-time status, no record found and never attended—the report certification date. Half-time status—(1) the date the student dropped below full-time, or (2) if half-time status is the original enrollment status, the report certification date Less than half-time status—the date the student dropped below half-time Leave of absence—the date the student began a leave of absence approved in accordance with §682.605(c). Graduated—the date the student completed the course requirements (not the date of the presentation of the diploma). Withdrawn—the date the student officially withdrew as determined by the school in accordance with §682.605(b).
Certification date	The date the institution completed the SSCR.
Other information	Please note any corrections to SSN, name, or permanent address of which you are aware. Please note the effective date of this information to avoid replacing newer information with old.

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Appendix B amended December 18, 1992, effective February 19, 1993. OMB control number amended February 19, 1993, effective February 19, 1993.

Appendix C-Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to FFELP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.\1\ These procedures allow for the reinstatement of

\1\All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15

payments in accordance with original repayment schedule or agreement.)

Reinstatement with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, 'reinstatement' with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations only of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied solely for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the 'cured' claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on 'Cured' Claims—a. Due Diligence Violations. For any default claim involving 'cured' violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving 'cured' due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving 'cured' violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a 'cured' timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

6. Documents to be Submitted with 'Cured' Claims. The Secretary requests that any lender submitting a claim on a loan involving 'cured' violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all 'cured' claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;

- All documents ordinarily required in connection with the submission of a default claim, including, without

limitation, the promissory note, which must bear a valid assignment to the United States of America;

• A new ED Form 1207; and

• All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence In Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

• Remind the borrower of the date a missed payment was due within 15 days of delinquency;

• Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;

• Request preclaims assistance from the Department of Education;

• Request skip-tracing assistance from the Secretary, if required, or

• Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g., copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims.—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48 hour" collection letter, on the lender's letterhead. (See attachment A.)

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps in 34 CFR 682.507 and the timely filing requirements in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default

claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender knows involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachments.

Attachment A

BILLING CODE 4000-01-M

Insert illustration 0 541

BILLING CODE 4000-01-C

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On (Date), I spoke with or received written communication from (copy attached):

(Circle a or b)

(a) the borrower on the loan underlying the default claim, or

(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are—____________________.

____

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

____

Name of Borrower

____

Borrower's SSN

____

Signature of Employee or Agent

____

Typed Name of Employee or Agent

____

Title of Employee or Agent

____

Date

____

Lender Identification Number

Note: Appendix C amended December 18, 1992, effective February 1, 1993.

Appendix D-Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138].

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections §432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, §682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(2), (a)(4), 682.413(b)(1). The regulations also specify that a lender must comply with §682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. See 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of

§682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in §682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§682.406(b) and 682.413(f), the Secretary-not the guaranty agency-decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See §§682.406(a)(5); and 682.413(b). As §§682.406(a)(6) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments. The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 90-day filing period applicable to FFEL Program default claims is set forth in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 270th day of delinquency (180-day default period plus 90-day filing period) if the borrower brings the account less than 180 days delinquent before such 270th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default

claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: the concept of "gap" is used herein simply as one measure of collection activity. For loans subject to the FFEL and PLUS programs regulations published on November 10, 1986, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in §682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period, a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 80 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement. While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority. The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guaranty agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing

violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guaranty agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, below, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. In that case, the Secretary will only examine the due diligence performed in the 180 days of delinquency immediately before default. However, an examination of the activity that occurred with respect to the account before it began the 180-day delinquency period may be necessary to verify the repayment status of the loan at the beginning of the delinquency period.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims. For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see Section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987-April 30, 1988-

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46-60 days (61-75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (See section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988--

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exists not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exists 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures. In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current as of Date of Cure. On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims—a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5-10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5-10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan

involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (see 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary had determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§682.402(e)(2)(ii)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guaranty agency for interest accruing beyond the filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a FFEL programs loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current §682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by §682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed two violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed

to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with §682.411, commencing with the first 30-day delinquency period described in §682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

[FR Doc. 92-30217 Filed 12-17-92; 8:45 am]

Note: Appendix D amended December 18, 1992, effective February 1, 1993.

Appendix-Summary of Comments

October 1, 1990 Federal Register Notice of Interpretation; Rule

SUMMARY: The Secretary interprets regulations issued for the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program, and the Consolidation Loan Program, collectively referred to as the Guaranteed Student Loan (GSL) Programs, that prescribe the actions lenders and guarantee agencies must take to collect loans guaranteed under the GSL Programs. The substance of the interpretation is that these regulations preempt State law regarding the conduct of these loan collection activities.

SUPPLEMENTARY INFORMATION: Questions have recently arisen about whether regulations issued by the Secretary to prescribe the actions that lenders must take to exercise due diligence in collecting delinquent GSL obligations, 34 CFR 682.411, and that guarantee agencies must take to collect defaulted GSL obligations, 34 CFR 682.410(b)(4), preempt State law. The Secretary issues this interpretation that 34 CFR 682.410(b)(4) and 34 CFR 682.411 preempt State law, including State case law, statutes, and regulations that are inconsistent with the provisions of these GSL regulations.

Background

Under section 432(a)(1) of the Higher Education Act of 1965, as amended (the HEA), 20 U.S.C. 1082(a)(1), the Secretary is authorized to prescribe such regulations as may be necessary to carry out the purposes of part B of title IV of the HEA. Among the purposes of part B is to authorize the Secretary to guarantee loans insured by guarantee agencies, 20 U.S.C. 1071(a)(1)(D), and in furtherance of that purpose, to ensure that holders of loans guaranteed under the GSL programs exercise due diligence in attempting to collect those loans. 20 U.S.C. 1078(c)(2)(A).

In regulations adopted in 1979 and in effect through 1986, the Secretary established detailed directions specifying the collection actions to be taken by lenders on loans guaranteed directly by the Department under the Federal Insured Student Loan Program (FISLP) component of the GSL programs. See: 45 CFR 177.511 (1979), 34 CFR 682.511 (1985). Those regulations, however, imposed no comparable requirements on lenders with regard to loans guaranteed by State or private non-profit guarantee agencies, or on those agencies

themselves, in collecting GSL program obligations that were reinsured and subsidized by the Department. The dramatic increase in the number and amount of delinquent and defaulted GSL obligations held by these parties between 1980 and 1986 demonstrated the need to adopt similar standards in the collection of these loans as well.

On November 10, 1986, therefore, the Secretary published regulations that prescribed, in 34 CFR 682.411, the steps that lenders must take to attempt to collect delinquent loans guaranteed by State and non-profit guarantee agencies in order for those loans to qualify for coverage under the Secretary's reinsurance agreements with the guarantee agencies. In 34 CFR 682.410(b)(4) of those same regulations, the Secretary prescribed the steps that guarantee agencies must take to attempt to collect defaulted loans on which they have paid default claims. Both regulations require holders of GSL obligations to complete a particular sequence of written and oral contacts with the borrower to demand repayment of delinquent or defaulted loan obligations, and to use skip-tracing if needed to locate debtors; guarantee agencies are also required, under certain circumstances, to sue borrowers, and to enforce judgments taken against the borrowers.

The Secretary expressly promulgated these rules in order to establish the "minimal level of effort necessary to protect the Federal fiscal interest in diligent loan collection," both by guarantee agencies and by lenders. 51 FR 40943. As reflected in the summary of comments and responses on the proposed rule, 51 FR 40943-40944, none of the parties that commented on these regulations raised specific questions or comments regarding the existence or effect of State law regulating debt collection activities on the conduct of the required collection actions described here. Moreover, in the preceding seven years during which lenders holding FISLP obligations had already been subject to comparably prescriptive collection rules, no instances had come to the Secretary's attention in which State rules were found to restrict or otherwise affect compliance with those FISLP-specific rules. For these reasons, the Secretary did not believe there was any need to articulate his intention to preempt inconsistent State laws in promulgating the GSL regulations at issue here in 1986. Nevertheless, in promulgating the rules as the "minimum level of [collection] effort necessary" to accomplish the Federal purpose, the Secretary clearly intended these 1986 rules to establish a uniform national minimum level of collection activity, and therefore to preempt any State rule that would hinder or prohibit the collection actions required under the rules.

Need for Issuance of Interpretation

Specific questions have now arisen about the effect of particular State laws that may restrict or prohibit holders of GSLP obligations from taking some of the actions required under these regulations. For example, in a number of instances borrowers who were contacted by a loan servicer acting on behalf of a lender after the servicer had been notified that the borrowers were represented by counsel asserted that the servicer had violated State law prohibiting those direct contacts. Similar charges were asserted by borrowers who were contacted directly by a guarantee agency after the agency had been notified that the borrowers were represented by counsel. Still other borrowers asserted that holders of GSL obligations violated State law by continuing to demand repayment of loans on which the borrowers had raised objections to repayment of their loans. In each of these instances, the borrowers invoked State law to attempt to prevent the holder of the loan from commencing or completing the sequence of collection actions prescribed in these regulations; the borrowers have also sought damages from the holders of these loans for the alleged violations of State law. Other State statutes have recently come to light that would prohibit lenders and guarantee agencies from taking any collection action to collect a loan if the school at which the borrower enrolled closed during the academic period for which the loan was made.

These recent developments demonstrate the need to immediately clarify the Secretary's intention to preempt inconsistent State law that underlay the promulgation of these GSL collection regulations in 1986. The Secretary recognized in November 1986 that if there were State laws inconsistent with these GSL regulations, those laws could pose a substantial obstacle to lender and agency efforts to comply with the GSL regulations. Since it is clear that those State laws in fact now exist, the threat of substantial financial penalties for potential violations of those State laws could force holders of GSL Program loans to choose between incurring those penalties by complying with the GSL regulations, or refraining from federally required collection efforts and losing the Federal guarantee. The possibility of those penalties, moreover, would not only tend to make holders of loans reluctant to complete the required collection actions, but reluctant to undertake those actions at all, and in fact, reluctant to make new loans. If those State laws were to apply to collection activity of the kind required in the regulations, they would thwart the congressional intention implemented in these regulations that holders exercise due diligence in attempting to recover on these loans, to the serious detriment of the GSL Programs.

In issuing the following interpretation explaining the Secretary's intention to preempt State law in promulgating the 1986 regulations, the Secretary stresses the limited nature of this action in displacing State rules and authority. This preemption applies only to actions to collect loans that are federally guaranteed through the vehicle of Federal reinsurance agreements with the guarantee agencies and, in most cases, directly federally subsidized as well. These regulations are designed to prevent defaults and the loss to the Federal Treasury, through claims under the Department's reinsurance commitments, caused by these defaults, and, where these losses have already occurred, to recover from defaulting borrowers the amounts paid from the Treasury. Therefore, rather than intruding into transactions in which the Federal Government has no direct involvement, this preemption is narrowly tailored to apply to situations in which the Federal Government has already given borrowers financial benefits, and has incurred, or will in all likelihood incur in the near future, even greater costs because of default on loans.

Thus, while this preemption imposed no added costs on States, the preemptive effect of these regulations extended no farther than is reasonably necessary to achieve an effective minimum standard of collection action. Given the strength of the public interest in preventing the need for Federal payments on defaulted loans, and in recovering those amounts after payment has been made, the Secretary believed at the time these regulations were promulgated, and continues to believe, that any balancing of interests between appropriate State regulation of collection actions on private debts and the need for a uniform minimum national standard

of collection action on publicly financed student loan debts tips decidedly in favor of diligent student loan collection.

A great deal of the collection action on GSL Program loans is performed for guarantee agencies by third party collection contractors. In balancing the need for local regulation of collection activity on GSL obligations against the public need for efficient and effective collection activity, the Secretary took particular note of the existence of Federal law that regulated the conduct of these third party collectors of defaulted student loans. These debt collectors were subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692-1692o, prior to the promulgation of these GSL regulations, and even under these preempting regulations, they remain subject to the FDCPA.\1\ Thus, while the GSL regulations preempt inconsistent State laws regarding pre-litigation collection activity, significant Federal protection for GSL debtors remains under the FDCPA. On the other hand, Federal law does not typically regulate the conduct of litigation in State courts or the enforcement of judgments, two areas traditionally regarded as within the sovereignty of State governments, and this GSL regulatory preemption has little or no impact on the exercise of that State power.

Not only did the Secretary regard the issuance of regulations preempting State law affecting student loan collections as well within the general authority and responsibility given under 20 U.S.C. 1082(a)(1), but the Secretary notes that he has long been authorized under 20 U.S.C. 1080(b) to contract with guarantee agencies and other parties to collect defaulted FISLP obligations, and to set the terms of those contracts so as to avoid unfair or oppressive collection practices by those parties in their collection efforts. In promulgating these regulations to set detailed minimum levels of collection activity, the Secretary was exercising this same kind of authority, over the activities of some of the very same GSL participants, in collecting loans in which the Federal government has almost the same financial interest as those to which 20 U.S.C. 1080(a) expressly applies.

Interpretation

The Secretary promulgated Secs. 682.410(b)(4) and 682.411 to establish minimum required collection actions on GSL obligations, and intended these provisions of the GSL regulations to preempt contrary or inconsistent State law to the extent necessary to permit compliance with the Federal regulations. The Secretary issues this interpretation to clarify that intention and to explain the scope of that preemptive effect.

1. Contacts With Borrowers by Demand Letters and Telephone Calls

First, the Department's regulations require lenders and agencies to make a number of contacts with the borrower directly, at specified intervals, using particular warnings to attempt to persuade the borrower to repay the loans Secs. 682.410(b)(4)(i)-(vi), 682.411 (c)-(f). The regulations require both lenders and guarantors to use skip-tracing if necessary, Secs. 682.410(b)(4)(xii), 682.411(g), and direct lenders to seek timely preclaims assistance from their respective guarantors. Sec. 682.411(h).

These provisions comprehensively regulate the pre-litigation informal collection activity on GSL obligations, by specifically requiring holders to complete a sequence of collection contacts with debtors. These provisions therefore preempt State law that would prohibit, restrict, or impose burdens on the completion of that sequence of contacts either on GSLP loans in general, or on any category of GSLP loans. Secs. 682.410(b)(4)(i)-(vi), (xii); 682.411 (c)-(h). Moreover, because holders of GSLP loans commonly engage servicers and collection agencies to perform these dunning activities, this preemption includes any State law that would hinder or prohibit any activity taken by these third parties to complete these required steps.

2. Litigation and Judgment Enforcement

The regulations in Sec. 682.410(b)(4)(vii)-(xi) generally require guarantee agencies to sue defaulters and to attempt to enforce judgments entered against defaulters, but do not otherwise dictate the manner in which the agency must conduct the litigation or enforce the judgment. Therefore, the regulations do not preempt State law that would affect the conduct of litigation or the enforcement of judgments, but would only preempt those State laws, if any, that would conflict with the regulatory requirement that a guarantee agency initiate suit and attempt to enforce a judgment.\2\

3. Other Collection Activities

This interpretation applies only to preemption by Secs. 682.410(b)(4) and 682.411. The Secretary does not attempt here to describe which other provisions of the GSL regulations, or the HEA itself, preempt State law. The Secretary does note, with regard to other collection actions, that the HEA itself expressly requires holders of GSL obligations to report the status of those loans to credit reporting agencies, 20 U.S.C. 1080a, makes GSL borrowers liable for reasonable collection costs, 20 U.S.C. 1091a(b)(1), and abrogates the defense of infancy on GSL obligations. 20 U.S.C. 1091a(b)(2). Each of these three provisions also relates to loan collection and preempts any conflicting or inconsistent State law.

In addressing the preemptive effect of these collection regulations, the Secretary likewise does not suggest that other provisions of GSL regulations do not also preempt State law if a direct conflict exists between the requirements of the regulations and State law, or if compliance with State law would frustrate achievement of the purposes of the regulations.

Authority: 20 U.S.C. 1082.

\1\ The Secretary has been advised by Federal Trade Commission representatives that no State has yet applied for exemption from coverage under the FDCPA under 15 U.S.C. 1692o, and therefore there is no need at this time to address the effect of this preemption under CSL regulations on State law as it might affect third-party collectors in a State for which the FTC has granted an exemption from compliance with the FDCPA.

\2\The HEA itself preempts State law in two areas directly affecting the litigation of GSL obligations: The calculation of the statute of limitations on lawsuits to collect these loans, and the recovery of collection costs from the borrower. 20 U.S.C. 1091a(a)(2), (b)(1).

Dated: August 28, 1990.

Lauro F. Cavazos,
Secretary of Education.

June 5, 1989 Federal Register Comments

Section 682.410 Fiscal, administrative, and enforcement requirements

Comments: Several commenters supported the Secretary's proposal to establish a default rate that would trigger a guarantee agency's review of a school. However, many commenters suggested that the 15% default rate trigger was too low and should be increased to reduce the burden imposed on schools and agencies by this requirement.

Discussion: A change has been made. The Secretary has revised the NPRM by increasing from 15% to 20% the default rate that triggers a guarantee agency program review of a school. The final rule also excludes from mandatory review any school that is subject to a default management plan imposed by the Secretary under 34 CFR 668.15, and any school whose default rate of over 20 percent is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions significantly reduce the number of program reviews that an agency would have been required to perform under the NPRM while preserving the effectiveness of this requirement as a default reduction tool.

The Secretary notes that, as guarantee agencies have previously been informed, the Department is receptive to proposals from individual guarantee agencies to employ specific selection criteria for program reviews that differ from the "top ten/2%" program review criteria in current Sec. 82.410(c)(1)(ii)(A) and (B). If the Secretary is satisfied that an agency's proposed criteria represent an effective approach to the selection of schools for reviews, he will grant that agency a waiver from those provisions.

Comments: Several commenters questioned the guarantee agencies' expertise to conduct program reviews of schools. Some commenters suggested that the reviews should be performed by professionally-trained auditors through program reviews by the Secretary or independent auditors hired by schools to review other Federal programs.

Discussion: No change has been made. Although the Secretary intends to increase Federal lender and school reviews, it is the Secretary's intent that guarantee agencies can and should assume a major responsibility for monitoring their program participants. The Secretary has provided guarantee agencies with extensive training in program review requirements and has developed a comprehensive site review guide for agency use.

Comments: One commenter recommended that the Secretary include a provision that would exempt from guarantee agency review any school that had lowered its default rate to below 15% even if its default rate exceeded 15% in the immediately preceding year.

Discussion: No change has been made. The Secretary believes that the increase from 15% to 20% in the default rate that triggers a guarantee agency review adequately addresses this concern.

Comments: Two commenters supported the requirement of guarantee agency program reviews of schools with excessive default rates, but thought that the review should be limited to the GSL, SLS, and PLUS programs, and should not include other Title IV programs.

Discussion: No change has been made. The provision requiring guarantee agency reviews of schools with fiscal year default rates in excess of 20% applies only to the GSL, PLUS, and SLS programs.

Comments: Several commenters questioned which agency would conduct the compliance program review for schools that deal with several guarantee agencies.

Discussion: No change has been made. An agency may either conduct a joint review of a school with another agency or establish a reciprocal agreement with the other agency. Under a joint review or a reciprocal agreement, each participating agency is responsible for the quality of the review. The Secretary recommends that all reciprocal agreements state that the performing agency will conduct the review in accordance with the OSFA site review guides, and that, as required, any unique requirements of each agency whose review response is to be satisfied by a review under the agreement will be included in each such review.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans

Comments: Some commenters recommended that, rather than requiring the lender to provide a copy of each preclaim assistance request to the school for attendance at which the loan was made, the lender should be allowed to provide this information to the last school attended by the borrower. The commenters noted that the last school attended by the borrower could provide more recent information to assist the lender in its collection efforts.

Discussion: No change has been made. The requirement that a lender provide a school with a copy of the preclaim assistance request is designed to alert the school of a potential default by one of its students, and to allow the school an opportunity to act in a timely manner to avert a default. Fairness requires that the school against whom a default will be charged have the opportunity to make a diligent effort to contact the borrower to encourage repayment.

Comments: Some commenters suggested that lenders be allowed to provide a periodic list to the school of delinquent borrowers for which the lender has requested preclaim assistance from the guarantor. Other commenters suggested that the guarantors, rather than lenders, provide this information to schools.

Discussion: A change has been made. The final regulations require the lender to notify the school within 30 days after it requests preclaim assistance. In this way, the regulations allow time for guarantors wishing to do so to provide schools with this notice on lenders' behalf, through the use of periodic lists. However, the Secretary believes that prompt notice to the school is necessary for any actions taken by the school to be meaningful in averting defaults, and is therefore requiring that notice reach the school within 30 days of the date of the lender's preclaim assistance request.

Section 682.604 Processing the borrower loan proceeds and counseling borrowers

Comments: Many commenters proposed that the lender, not the school, be responsible for counseling the student prior to the disbursement of the loan proceeds to the institution.

Discussion: No change has been made. The Secretary has declined to impose the responsibility of in-person counseling on the lender because the distance between many lenders and the borrowers they serve is often great. The Secretary believes that since a school will typically be in a better position than the lender to engage in face-to-face counseling, it is the most appropriate entity to provide entrance counseling. Moreover, lenders are already required to provide detailed disclosures to borrowers at the time of loan disbursement regarding the borrower's rights and obligations on GSL and SLS loans.

Comments: Several commenters indicated that they believe entrance counseling is redundant and ultimately ineffective because, in their view, early counseling does not make an impression on the student and does not significantly reduce defaults. Many other commenters supported the requirement of entrance counseling as an effective default reduction measure.

Discussion: No change has been made. The Secretary believes, and the experience of many schools confirms, that improving a borrower's understanding of the terms and conditions of the loan and impressing upon the borrower the importance of meeting his or her repayment obligations, at the time of receipt of loan proceeds, helps greatly in reducing defaults.

Comments: Several commenters suggested that the school be given the flexibility to schedule entrance counseling throughout the semester, or at least prior to the student's second loan disbursement, to avoid scheduling all counseling sessions with loan recipients during the registration period, when a substantial burden is already being imposed on the school's administrative resources.

Discussion: No change has been made. The Secretary believes it is imperative for students to receive loan counseling at, or prior to, the receipt of a GSL or SLS loan. The linkage of this counseling with the receipt of loan funds will impress upon the borrower the importance of the obligation to repay the money he or she is about to receive, thereby lessening the risk of default.

Comments: Several commenters recommended that schools be allowed to use videotape presentations to counsel their students. Some commenters suggested that a videotape presentation followed up by a question and answer period with a financial aid officer would be an effective and efficient way to counsel borrowers.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the NPRM to allow for videotape presentations, and to require that the school provide each borrower an opportunity, after the entrance counseling session, to obtain answers to questions he or she may have regarding the loan.

Comments: Many commenters believed that requiring entrance counseling is too burdensome and costly for a school with a small financial aid staff and a large number of loan recipients. Other commenters expressed concern about the difficulty centralized financial aid offices would have in meeting with loan recipients at remote branches of the school, and suggested that the school be paid an administrative allowance to cover the extra burden.

Discussion: No change has been made. The Secretary believes that an institutional financial aid office can inexpensively reach its loan recipients through the use of group counseling sessions or videotapes.

Comments: One commenter recommended that the requirement in the NPRM that students in undergraduate non-baccalaureate vocational training programs be advised that they are obligated to repay their loans regardless of the outcome of their enrollment in the program, should be expanded to apply to all programs of study.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the regulations to make this requirement applicable to all programs of study.

Section 682.605 Determining the date of a student's withdrawal

Comments: Several commenters indicated that the proposed change to Sec. 82.605(a) requires clarification.

Discussion: No change has been made. The amendment to Sec. 82.605(a) simply clarifies that the date of a student's withdrawal, calculated under Sec. 82.605(b), only relates to the institution's reports to lenders and to the date on which the institution's duty to pay a refund arises, not to the withdrawal date used for refund calculations. For this latter purpose, Sec. 82.604 uses the student's last recorded day of attendance as 34 CFR 668.22 has done since January, 1988.

Section 682.606 School refund policy

Comments: Many commenters objected to the proposed amendment to Sec. 82.606 requiring a school to employ a pro rata refund policy for a student receiving or benefiting from a GSL, SLS, or PLUS program loan who withdraws prior to the completion of the academic period for which the loan is made. These commenters believe that this requirement represented an unwarranted Federal intrusion into a school's administrative practices and would impose a significant increase in the administrative burden involved in refund calculations. Numerous commenters also argued that a pro rata refund was unfair in light of the substantial "up front" costs incurred by schools in enrolling a student and in offering a program that does not appreciably change when a student withdraws from school. A number of commenters argued that their current institutional refund policies, developed using standards approved by their accrediting agencies, are fair and equitable and do not unfairly penalize dropouts or contribute to loan defaults. Many commenters noted that the loss of revenue to the school that would result from the increased volume and dollar amount of refunds calculated using a pro rata policy would inevitably be passed along to students in the form of increased tuition costs. Several commenters suggested that the availability of a pro rata refund would encourage a student to withdraw when he or she encounters academic or financial difficulties. Several commenters recommended restricting the use of a pro rata

policy to high default schools since the Secretary, in announcing the proposed rules, noted the linkage between a high level of dropouts and defaults. Some commenters recommended that the Department should not regulate the refund policy applicable to students who complete at least one half of their programs to reduce the administrative burden on schools and the intrusiveness of the rule, and in recognition both of the "up front" costs argument and the inapplicability of the "drop out reduction" rationale to a student that completes a substantial portion of the program before dropping out.

Discussion: A change has been made. Although the widely used practice of over-enrollment and the ability of many schools to quickly replace a dropout with a new enrollee militate strongly against the "up front costs" argument, the Secretary is requiring the use of a pro rata refund policy only when the default experience of the school requires that step to maintain GSL, SLS, and PLUS program integrity. Accordingly, this provision has been revised to require the implementation of a pro rata refund policy only by schools with default rates above 30 percent. Any school with a default rate at or below 30% must continue to use fair and equitable refund policies as defined in existing regulations. Further, the Secretary believes that the prospects for default are greater among those students who withdraw early in their programs, and that the aim of this rule should therefore be to remove the incentive for a school to enroll a student lacking a reasonable prospect for completing his or her program of study. The Secretary has accordingly revised the proposed rule to require the use of a pro rata policy only for a student whose withdrawal date occurs prior to the halfway point of the student's program, or the end of the first six months of the student's program, whichever is earlier. The Secretary believes that this targeted application of the pro rata refund rule will achieve the goals of the rule with a minimum of adverse effects. Also, the Secretary has revised the rule to permit the school to round upward to the nearest 10 percent the portion of the program deemed to have been completed by a student, to reduce administrative burden.

Comments: Several commenters from public institutions indicated that State law prevents them from applying a pro rata refund policy.

Discussion: No change has been made. The Secretary considers the use of a pro rata refund policy by those schools with default rates above 30 percent to be a necessary and appropriate administrative requirement for participation in the GSL, SLS, and PLUS programs. Therefore, schools that are subject to this requirement are required to implement a pro rata refund policy if they wish to continue to participate in those programs, regardless of the requirements of State law.

Comments: Many commenters objected to the imposition of a pro rata refund policy on the grounds that it would create inequities between loan recipients and students who do not receive loans or who do not receive any Title IV aid. Some commenters felt that the proposed regulations would force schools to establish multiple refund policies. Others considered that they would, as a matter of equity, be forced to apply a pro rata refund policy to all students. A number of commenters asserted that any refund policy mandated by the Secretary should encompass all students at an institution.

Discussion: No change has been made. The Secretary's legal authority to mandate refund policies at school is limited to students benefiting from GSL, SLS, or PLUS loans.

Comments: Some commenters argued that the implementation of a pro rata refund policy would have little impact on the default rate at a school, particularly if the school continues to be permitted to apply refund amounts to other sources of aid before returning loan funds to lenders. Other commenters indicated that, since students often use loan funds for non-institutional costs, a pro rata refund policy affecting only direct institutional costs, may result in minimal increases in refunds for many students.

Discussion: No change has been made. These final regulations require high default schools to take steps, such as the implementation of a pro rata refund policy, to address the problem of defaults by dropouts. The primary purpose of the pro rata refund requirement is not to increase the dollar amount of loan funds returned to the lender, but to remove the incentive for high default schools to enroll students who are inadequately prepared and are therefore likely to quickly drop out and default. This rule also will provide an incentive for schools to take steps on their own to improve their completion rates.

Comments: A number of commenters suggested various measures to either complement or replace the implementation of the pro rata refund policy. Some commenters suggested that loans should be awarded incrementally as the student progresses through the academic term or that the aid be awarded after the student has successfully completed the term. Others felt that lenders should be required to disburse Part B loans according to dates recommended by the school. Still other commenters suggested requiring credit-worthy endorsers as a way to reduce defaults.

Discussion: No changes have been made. Implementation of these suggestions would require statutory amendments and therefore does not fall within the scope of these final regulations.

Comments: Many commenters maintained that the administrative fee that the school would be allowed to retain, pursuant to Sec. 82.606(c)(1), would not cover all administrative expenses. Some suggested raising the amount to as much as $500.

Discussion: A change has been made. The revised rule allows a school to retain at least 10 percent of tuition and fees paid by a student that attends school at all during the loan period, in addition to the $100/5% administrative fee.
Section 682.607 Payment of a refund to a lender

Comments: A number of commenters stated that students often do not officially withdraw. Consequently, the school may not become aware of the student's withdrawal until the start of a subsequent academic period, or the school may not be able to identify the last date of attendance. Many of these commenters believe that the period for paying a refund to the lender should run from the start of the next academic period after that in which the borrower withdraw, as determined under Sec. 82.605(b)(1)(ii). Other commenters urged the Secretary to retain the prior rule, which they read as requiring that a refund to be sent to the lender within 30 days of the date of the school's determination that the student has withdrawn.

Discussion: No change has been made. Current regulations treat the last recorded date of attendance as the dropout date for students who unofficially withdraw. 34 CFR 668.22. Under the prior regulations, with respect to an unofficial withdrawal, a refund was required to be sent within 30 days of the withdrawal date, i.e., the last recorded date of attendance. This date could occur several months before the end of the academic period in which the student ceased attendance. The Secretary does not believe this result is consistent with the administrative practices of many schools in monitoring enrollment status. However, the Secretary continues to be concerned with the length of time a refund remains unpaid, because the Secretary is continuing to pay interest benefits and special allowance on the full outstanding balance of the loan even though the funds are no longer needed by the borrower to pay educational expenses, and because a persistently inflated loan balance increases the risk of default. The Secretary believes that a school cannot be permitted to wait until the beginning of the next academic period to determine which students have unofficially withdrawn and pay their refunds. The Secretary also believes that, once the school has determined that the student has withdrawn, the school should expeditiously process any refund owed, and has therefore revised the regulations to require payment of a refund within 60 days of the date of the school's determination that the student has withdrawn. See Sec. 82.607(c)(2)(iv).

Comments: Several commenters, suggested that the period in which a refund must be paid be extended from 30 up to 60 days. They believe that 30 days from the earlier of the dates specified in Sec. 82.607(c)(1) does not provide sufficient time to allow for unexpected delays in processing refunds (e.g., computer delays, the involvement of more than one office in the refund process, etc.), and that such a timeframe, immediately following the end of an academic period, could create undue administrative burdens.

Discussion: A change has been made. Section 682.607(c) now requires that the school must pay the lender a refund within 60 days of the earlier of the dates specified in Sec. 82.607(c)(1) or, pursuant to Sec. 82.607(c)(2), within 60 days after the last day of an approved leave of absence when the student does not return to school.

Comments: Several commenters questioned how the use of the term "semester" in Sec. 82.607(c)(1)(ii) would apply to schools that do not use semesters.

Discussion: A change has been made. The final regulation uses the term "academic term" to clarify its applicability to quarters and trimesters.

Section 682.610 Records, reports, and inspection requirements for participating schools

Comment: Several commenters pointed out any change in the borrower's surname that the school was aware of would be very useful to the holder of the loan.

Discussion: A change has been made. This section in the final regulation has been revised to require a school to furnish upon request any information it has regarding the borrower's surname.

Comments: One commenter suggested that this provision would be an administrative burden for the school, requiring them to track former students.

Discussion: No change has been made. Nothing in this section requires a school to furnish any more information than it has on hand respecting the last known address, surname, employer and employer address of a borrower who attends or has attended the school.

September 26, 1991 Federal Register Comments

Sec. 682.208 Due diligence in servicing a loan.

Comment: The overwhelming majority of comments received favored the Secretary's proposal to require that the borrower to be notified when his or her GSL, PLUS or SLS loan is assigned and the identity of the party to whom payment must be sent changes. However, several of the commenters recommended that the Secretary revise the provision to require that the assignor, rather than the assignee, notify the borrower of the loan assignment.

Discussion: The commenters argued that since the borrower is familiar with the assignor, notification of the borrower by the assignor, rather than the assignee, would ensure a smoother transfer of the borrower's loan to the assignee by minimizing any confusion that may otherwise result from receipt by the borrower of a notice from an unfamiliar third party requesting that future payments be made to that third party. The commenters also stated that prior experience of major lenders indicates that unless the assignor provides some notice, the notice from the assignee causes confusion and frequently requires additional contact to ensure that the borrower understands the nature of the transfer and the validity of the request for payment by the assignee. Commenters also indicated that New York State law requires notification by the assignor. In addition, a major organization representing lenders stated that it is common for the seller to send a notice after the consummation of the sale and that most purchasers send the borrower an account statement and notice of the sale following the sale.

Changes: The Secretary agrees with the commenters and has revised the final regulations to require, as a condition for payment of reinsurance on the assigned loan, that both the assignor and the assignee provide the notification to the borrower when a loan assignment results in a change in the identity of the party to whom subsequent payments of the loan are to be made. By retaining the notice to the borrower from the assignee and permitting joint notification from both parties and the use of the assignee for this purpose as agent of the assignor, the Secretary believes that the potential for borrower confusion of fraudulent notification is reduced significantly without requiring undue additional administrative costs by the assignee or assignor.

Comments: Many commenters suggested that a borrower be notified whenever there is a change in the holder of the note, even if the borrower is not yet in repayment status, rather than only when that change results in a change in the identity of the party to whom subsequent payments of the loan are to be made.

Discussion: The Secretary's goal is to assure that borrowers receive timely notice of any changes in the identity of the party to whom subsequent payments are to be made. The issue in these regulations is not one of providing full and accurate information. The borrower should always be provided full and accurate information in response to

questions or where the borrower requests information. The issue here is what information the borrower must have to fulfill his/her obligations. The final regulations are designed to keep the borrower informed of any changes in the holder or servicer of his/her loan(s) at the point in time that such changes are critical to the repayment of the borrower's loan(s) in order to avoid student loan defaults. Many of the comments received supported the Secretary's belief that borrower confusion about the identity of the party to whom subsequent payments are to be made often adversely affects repayment. The Secretary believes that restricting the notification requirement to loan assignment situations in which there is a change in the party to whom future payments must be made is sufficient to meet his goal.

Changes: None.

Comments: Several commenters argued that the time frame provided for borrower notification was unrealistic given the complexity of loan transfers. These commenters stated that most loan transfers are contractually conditioned upon the assignee's determination that a loan has been properly serviced and has retained its insurance and reinsurance coverage. The commenters pointed out that any notification to a borrower prior to or simultaneous with the assignee's receipt of legal interest in the assigned loan could cause confusion if the loan is returned to the original holder following the assignee's review. These commenters suggested that the Secretary adopt in the guarantee agency programs the requirement for "prompt" notification in 34 CFR 682.508(b)(2)(ii). Other commenters suggested that a time frame of ten to 30 days following the date the loan assignment is completed should be provided to allow sufficient time to notify the borrower.

Discussion: The Secretary agrees that premature notifications to borrowers regarding the assignment of a loan may cause a great deal of confusion for borrowers. He also agrees with the commenter's belief that an adequate time frame must be allowed for notification of the borrower after the loan assignment has been completed.

Changes: The Secretary has revised the final regulations to require borrower notification to take place no later then 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned GSL, PLUS, or SLS loan. The Secretary has provided for the notification to be done separately or jointly by the assignor and assignee. Alternatively, the assignee can act as the assignor's agent in providing the required notices. The 45 day time frame, which is consistent with the current business practice of some student loan secondary markets, will encourage an assignee to complete assignment of the loan in a timely manner, while providing sufficient processing time to add the loans to the new holder's servicing system. Further, this time frame assures that notification of the borrower will also occur in a timely manner.

Comment: Several commenters recommended that the proposed regulation be expanded to also require that the borrower be notified if the assignment involves a change in the guarantor or the servicer of the loan.

Discussion: The Secretary believes that notification to a borrower when a loan assignment results in a change in the identity of the party to whom subsequent payments are to be made is sufficient to ensure that there is little or no disruption in the borrower's repayment of the loan.

Changes: None.

Comment: Several commenters recommended that the assignor also be required to simultaneously notify the school or schools attended by the borrower of the loan assignment so that the school can assist the borrower if repayment problems arise.

Discussion: The Secretary believes that an additional requirement is unnecessary given the revision of the final regulations to require notification of the borrower by both the assignor and the assignee when a loan transfer occurs. The Secretary believes that the notice will ensure that the borrower understands that his or her loan has been transferred, and knows the identity of the new holder and the address to which future payments must be sent. Therefore, the borrower will not require the assistance of the school. In addition, he believes that the regulatory requirement under Sec. 682.411(h), which requires the lender to notify the school when preclaims assistance is requested for a former student, offers the school the opportunity to take action to help prevent a former student from defaulting on a GSL program loan.

Changes: None.

December 18, 1992 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan (FFEL) programs. The new FFEL regulations will govern the Federal Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation programs. These programs complement key components of American 2000, the President's education strategy. The final regulations incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA) (Pub. L. 99-272), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments) (Pub. L. 99-498), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments) (Pub. L. 100-50), Public Law 100-297 (enacted April 28, 1988), Public Law 100-369 (enacted July 18, 1988), the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239), the Omnibus Budget Reconciliation Act of 1990 (enacted November 5, 1990) (Pub. L. 101-508), the National and Community Service Act of 1990 (enacted November 16, 1990) (Pub. L. 101-610), the Higher Education Technical Amendments of 1991 (enacted April 9, 1991) (Pub. L. 102-26), one technical change required by the Emergency Unemployment Compensation Act of 1991 (enacted November 14, 1991) (Pub. L. 102-164), and changes to reflect self-implementing provisions of the Higher Education Amendments of 1992 (1992 Amendments) (enacted July 23, 1992) (Pub. L. 102-325). To the extent these regulations may

be inconsistent with the 1992 Amendments, the 1992 Amendments supersede the regulations. The remainder of the provisions enacted as part of the 1992 Amendments will be addressed in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The final regulations also establish various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment of defaulted loans.

EFFECTIVE DATE: Except as otherwise specified below, these regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of Sections 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.406, 682.407, 682.409, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, 682.711, 682.712, 682.713, 682.802, 682.803, and appendix B. These sections will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Subject to approval under the Paperwork Reduction Act, if applicable, the following effective dates also apply to certain provisions of these regulations.

Section 682.302(d)(1)(v), which requires lenders to file default claims within 60 days after the date of default to retain eligibility for special allowance payments from the Secretary, is effective for loans on which the first day of delinquency is on or after 120 days of following the date of publication.

Section 682.302(d)(1)(vii), which requires a lender to resubmit within 30 days a default claim that has been returned to the lender by the guaranty agency due solely to inadequate documentation to maintain eligibility for special allowance, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.401(d)(3), which requires a guaranty agency to use common forms approved by the Secretary is, with the exception of the common application form and promissory note, effective 360 days following the date of publication. Under the 1992 Amendments, the Secretary must approve a common application form and promissory note within 360 days after the enactment of that law.

Section 682.401(b)(17), which requires a guaranty agency to have a written agreement with each lender in its program, is effective 120 days following the date of publication.

Section 682.401(b)(18)(ii), which requires guaranty agencies to use the data elements and report format provided in appendix B for monitoring the enrollment status of student borrowers, is effective 120 days following the approval of this provision by OMB under the Paperwork Reduction Act of 1980.

Section 682.406(a)(3), which requires a lender to provide an accurate collection history and payment history to the guaranty agency with each default claim, is effective for loans that enter repayment on or after the effective date of these regulations.

Section 682.406(a)(6), which requires a lender to resubmit within 30 days a default claim that has been returned by the guaranty agency due solely to inadequate documentation for interest accruing beyond the 30th day to be reinsured, or to resubmit the claim within 60 days to maintain reinsurance on the loan, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.406(a)(8), which requires that guaranty agencies must pay or reject a claim by the 60th day after a default claim is received for the interest accruing after the 60th day to be reinsured, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

Section 682.410(b)(4), which requires guaranty agencies to capitalize any interest due to the lender from the borrower at the time the guaranty agency pays the default claim, is effective for claims paid by the agency on or after 120 days following the date of publication.

Section 682.411, which defines the minimum due diligence requirements for lenders in the collection of guaranty agency loans, is effective for loans on which the first day of delinquency is on or after 120 days following the date of publication.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

SUPPLEMENTARY INFORMATION: The Stafford, SLS, and PLUS programs provide loans to eligible student or parent borrowers who might otherwise be unable to finance the costs of postsecondary education. The Consolidation Loan Program gives borrowers an opportunity to consolidate loans made under the Stafford loan, Perkins loan (formerly National Direct Student Loan), PLUS (for loans made to students prior to 1986), SLS, and Health Professions Student Loan programs.

On November 20, 1990, the Secretary published a notice of proposed rulemaking (NPRM) for the GSL programs in the Federal Register (55 FR 48324). Those proposed regulations did not reflect changes to the Higher Education Act of 1965, as amended, (the Act) authorizing legislation for the FFEL programs made after the enactment of Public Law 100-369 (July 18, 1988). These final regulations, however, now reflect the statutory changes made to the programs by the laws identified in the Summary, which include provisions that—

- Provide that an individual serving in a medical internship or residency program, except for an internship in dentistry, is ineligible to receive a Stafford or SLS loan (Section 682.201(a)(8));

- Prohibit a borrower who is serving in a medical internship or residency program, except for an internship in dentistry, from receiving or continuing a deferment of repayment on a Stafford or SLS loan based on the borrower's full-time or half-time study at a school (Section 682.210(c)(4));

- Require a lender to grant forbearance to a borrower who is serving in a medical internship or residency program and who already has received the maximum two-year internship deferment (Section 682.211(g));

• Provide that a student who does not have a high school diploma or recognized equivalent is ineligible to borrow an SLS loan (Section 682.201(a)(3)(ii);

• Provide that the proceeds of any Stafford or SLS loan must be disbursed in two or more installments regardless of the amount of the loan or the length of the period of enrollment for which the loan is made (Section 682.207(c)(1));

• Prohibit a lender or escrow agent from disbursing the second or any subsequent disbursement of a Stafford or SLS loan after it is informed by the student or institution that the student has ceased to be enrolled at the institution (Section 682.207(b)(1)(vi));

• Require an institution to withhold from the student and promptly return to the lender or escrow agent any Stafford or SLS disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid obtained by the student (Section 682.604(h));

• Require the student to provide the lender with a statement from the institution setting forth a disbursement schedule for the proceeds of a Stafford or SLS loan in installments (Section 682.207(b)(1)(B));

• Require that, for a student to be eligible to receive financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended (the Act), a student who does not have a high school diploma or a recognized equivalent must pass an independently administered examination approved by the Secretary (Section 682.201(a)(7));

• Require guaranty agencies, upon request of a lender, to provide preclaims assistance on accounts that are less than 120 days delinquent and supplemental preclaims assistance on accounts that are delinquent at least 120 days (Section 682.411(h));

• Require guaranty agencies, upon the request of an eligible institution, to furnish information to the institution on borrowers who were enrolled at the institution and who have defaulted on their FFEL loans (Section 682.401(b)(22));

• Establish a minimum period for annual SLS loan eligibility that is the greater of the length of the institution's academic year or seven consecutive months (Section 682.204(e)(2));

• Prohibit an institution from delivering for endorsement the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution, and who has not previously received a Stafford or SLS loan, until 30 days after the first day of the student's program of study (Section 682.604(c)(5));

• Extend the provision prohibiting the discharge of certain student loans to borrowers who file for relief under Chapter 13 of the Bankruptcy Code;

• Extend the 5-year period under which a Title IV loan generally may not be discharged in bankruptcy to 7 years (Section 682.402(d)(5)(B));

• Permit an institution to refuse to certify an otherwise eligible borrower's FFEL application, or to certify a loan for an amount that is less than what the student would be otherwise eligible for, as long as the reason for that action is documented and given to the student in writing (Section 682.603(e));

• Require an institution to review with the borrower during exit counseling the conditions under which the borrower may defer repayment of a loan because of service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer in a tax-exempt organization (Section 682.604(g)(2)(vi));

• Eliminate any statutes of limitation that previously applied to enforcement action to collect FFEL loans;

• Prohibit a guaranty agency for retaining 35 percent of collections from defaulted borrowers obtained through a wage garnishment law that complied with section 428E of the Act, which was repealed by section 605(b)(1) of Pub. L. 102-164;

• Provide a reduced annual limit on SLS loans for a student in a program of study that is less than a full academic year in length (Section 682.204(e)(1));

• Prohibit an incarcerated student from borrowing under the FFEL program;

• Require an annual independent compliance audit of each lender conducted by an independent organization or person (Section 682.305(c));

• Require a guaranty agency to submit a request for payment of reinsurance no later than 45 days after the guaranty agency has paid a claim to the lender on a loan (Section 682.406(a)(9));

• Require a guaranty agency, upon the request of a school, to provide information to the school about a borrower who received an FFEL loan for attendance at the school if the borrower's lender submitted a request for preclaims assistance (Section 682.404(a)(5));

• Require the lender prior to or at the time the loan is disbursed to provide the borrower with a clear and concise statement, in bold print and prominently and clearly displayed, that the borrower is receiving a loan that must be repaid (Section 682.205(a)(1));

• Require the lender to disclose certain information regarding repayment to Stafford and SLS borrowers not less than 60 days nor more than 240 days before the first payment on the borrower's loan becomes due (Section 682.205(c)(1));

• Eliminate the requirement for a lender to disclose the projected total of interest charges to SLS, PLUS, or unsubsidized Stafford loan borrowers if the lender provides the borrower with sample projections of monthly repayment amounts (Section 682.205(d));

• Provide that the lender must charge an SLS or PLUS loan borrower an origination fee of five percent of the principal amount of the loan (Section 682.202(c));

• Change the definition of eligible institution by repealing the definitions of "institution of higher education"

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and "vocational school" previously found in section 435(b) of the Act (Section 682.200). For purposes of an in-school deferment, an eligible institution includes an institution of higher education whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL programs because of a high default rate;

• Define when a repayment period begins for loans made under each of the FFEL programs (Section 682.200);

• Provide a variable interest rate for new Stafford loan borrowers (Section 682.202(a)(1));

• Establish new maximum variable rates for SLS and PLUS loans (Section 682.202(a)(2) and (a)(3));

• Establish a reduced annual loan limit for Stafford loan borrowers who have not completed the first year of an undergraduate program (Section 682.204(a));

• Require a lender to disburse a PLUS loan by means of a co-payable check or by electronic funds transfer (EFT) to the school (Section 682.207(b));

• Require a lender to disburse loan proceeds, at the borrower's request, directly to a borrower enrolled in a study-aboard program approved for credit at the home institution or, at the borrower's request, to the home institution for the endorsement or EFT authorization by an individual provided power-of-attorney by the borrower (Section 682.207(b)(10)(v));

• Require that if a loan is sold, transferred, or assigned to another holder and there will be a change in the identity of the party to whom the borrower must send subsequent payments or direct communications, both the assignor and assignee must provide separate notices to the borrower regarding the sale or transfer (Section 682.208(e) and Section 682.508);

• Provide that an SLS borrower who has not yet entered repayment on a Stafford loan may postpone payment until expiration of the borrower's grace period on the borrower's Stafford loan (Section 682.209(a)(2)(iii));

• Make PLUS borrowers eligible to borrow under the Consolidation Loan program if the PLUS loans were obtained after October 17, 1986 (Section 682.100);

• Extend eligibility for Consolidation loans to delinquent and defaulted borrowers who will re-enter repayment through loan consolidation (Section 682.201(c)(1)(ii)(C)(1));

• Allow a Consolidation loan borrower to add additional loans received prior to the date of the Consolidation loan during the 180-day period following the making of the Consolidation loan (Section 682.209(h)(4));

• Provide that interest will be paid by the Secretary on behalf of a Consolidation loan borrower during authorized deferment periods (Section 682.210(a)(3));

• Allow married couples to consolidate their loans jointly (Section 682.201(c)(2));

• Provide for longer repayment periods for Consolidation loan borrowers and require lenders to offer these borrowers repayment schedules that provide for graduated or income-sensitive repayment (Section 682.209(h));

• Provide that when a lender grants forbearance to a borrower, it must be a total cessation of payments unless the borrower requests an extension of time for making payments or a temporary acceptance of smaller payments than previously were scheduled (Section 682.211(h));

• Increase the amount of a fine from $1,000 to $10,000 for any person who knowingly and willfully makes an unlawful inducement to an eligible lender (Section 682.212(g));

• Require a guaranty agency to have an independent financial and compliance audit annually (Section 682.410(b)(1));

• Require the Secretary to prescribe a common application form and promissory note and other common forms developed in cooperation with FFEL program participants (Section 682.401(d));

• Repeal the prior 1 percent limitation on the amount of discount at which a tax-exempt authority may purchase student loans from lenders;

• Eliminate a lender or school's opportunity to request a hearing on the record as governed by the Administrative Procedure Act in the Secretary's review of a guarantee agency's disqualification action against the lender or school (Sections 682.712 and 682.713).

The regulations established various policy initiatives designed to reduce defaults and increase collections on loans that go into default. They also include the revisions to part 682 made in the following final regulations that recently were published: regulations implementing the targeted teacher deferment, see 55 FR 35002 (August 27, 1990); regulations relating to appeals from the loss of FFEL program eligibility for high default rate schools, see 56 FR 33332 (July 19, 1991); and regulations requiring the lender to notify the borrower of a loan assignment, see 56 FR 48990 (September 26, 1991).

To reduce unnecessary duplication of regulations that apply to all Title IV student assistance programs, these regulations delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions regulations (34 CFR part 668) and the Institutional Eligibility Regulations (34 CFR part 600).

These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's America 2000 strategy to move the nation toward achieving the National Education Goals. The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Substantive Revisions to the Notice of Proposed Rulemaking

Subpart B-General Provisions

Section 682.200 Definitions

• The Secretary has incorporated into the regulations a definition of "expected family contribution" for the FFEL programs that is consistent with the existing definition used in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs.

• The Secretary has revised the definition of "holder" to include a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

• The Secretary has changed the definition of "lender" contained in proposed Section 682.200. The NPRM would have allowed mortgage loans serviced, but not held by the lender, to be included in the calculation of the lender's total consumer credit portfolio. The final regulations provide that only loans held by the lender may be included in this calculation. The final regulations also delete the proposal to use a net income standard to determine a lender's primary consumer credit function since events beyond the lender's control, such as an increase in interest rates or defaults on non-student loans, may result in student loans representing the majority of a lender's profits.

• The Secretary has modified the definition of "Stafford Loan Program" to indicate that an unsubsidized Stafford loan is an insured Stafford loan that does not qualify for interest benefits.

Section 682.201 Eligible Borrowers

• The Secretary has revised the provisions of Section 682.201(a)(5) to require borrowers to reaffirm any written-off FFEL programs debt before the borrower can receive additional aid under the FFEL programs.

Section 682.202 Permissible Charges by Lenders to Borrowers

• The Secretary has revised Section 682.202(a) of the regulations to include the provisions of section 427A of the Act that require a rebate to be given to a borrower with a Stafford loan with an interest rate of 10 percent in the event that Treasury bill rates decline below a certain level.

• Section 682.202(f)(2)(ii) of the proposed regulations has been dropped to be consistent with changes made in Section 682.201(a)(4).

• The Secretary has deleted from Section 682.202(g) of the proposed regulations, which identifies the costs that a lender may pass on to the borrower in the collection of a FFEL loan, the cost of local and long-distance telephone calls, skip-tracing costs, credit bureau reporting costs, costs of preparing letters or notices, and collection firm charges.

Section 682.205 Disclosure Requirements

• The Secretary has deleted the requirement in proposed Section 682.205(a)(1) that would have required a lender to secure the borrower's signed acknowledgement of the initial disclosure statement before disbursing loan funds. Current regulatory language, without the requirement of a signed statement, has been reinstated.

• Proposed Section 682.205(b)(3) has been deleted in light of the deletion of Section 682.215 resulting from the Secretary's decision not to prescribe in regulations a uniform Federal rule regarding borrower defenses.

Section 682.207 Due Diligence in Disbursing a Loan

• The Secretary has revised Section 682.207(d)(2) of the proposed regulations to allow a lender to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended unless the guaranty agency prohibits late disbursements. The regulations also have been revised to allow a late disbursement to cover a student's documented educational expenses for costs normally included in a borrower's cost of attendance under section 472 of the Act rather than only outstanding institutional charges as proposed in the NPRM.

Section 682.208 Due Diligence in Servicing a Loan

• The Secretary has deleted the requirement in Section 682.208(b) of the proposed regulations that would have required a lender to report the borrower's date of default to at least one national credit bureau as provided in section 430A(a)(2) of the Act. This task has been, and will continue to be, performed by the guaranty agency that pays the default claim.

• The Secretary has deleted the requirement in Section 682.208(d) that required lenders offering graduated repayment to restrict to the first five years of repayment the period during which the lender may provide for graduated or income-sensitive payments.

Section 682.210 Deferment

• The Secretary has deleted the proposal contained in proposed Section 682.210(a)(4)(ii) that permitted a lender to grant a borrower a deferment based on substantially complete documentation pertaining to the borrower's eligibility for a deferment. The final regulations permit a lender to grant a deferment based only on complete information and documentation that establishes the borrower's deferment eligibility.

• The Secretary has changed proposed Section 682.210(h)(1)(iii), which specifies the requirements for an unemployment deferment, to define the circumstances under which a public or private employment agency's location is accessible. The Secretary has determined that such an agency is accessible to an unemployed borrower if the agency is located within a 50-mile radius of the borrower's permanent or temporary address.

• The Secretary has modified proposed Section 682.210(m)(1)(iii) to permit a borrower to qualify for a deferment as a full-time paid volunteer for a tax-exempt organization as long as the borrower does not receive compensation that exceeds the Federal minimum wage. The proposed regulations would have required the borrower to earn less than the Federal minimum wage to qualify for this deferment.

Section 682.211 Forbearance

• The Secretary has revised the proposed section to permit lenders to grant forbearances to endorsers as well as to the student or parent borrower. Historically, the Secretary has encouraged lenders to extend forbearance to borrowers to prevent defaults. The Secretary believes that extending the forbearance provisions to an endorser who has agreed to make scheduled payments on behalf of the borrower but who temporarily is unable to do so because of personal circumstances will be equally effective in preventing defaults.

• The Secretary has added Section 682.211(g) of the regulations to provide that a lender must grant forbearance of interest and principal to borrowers serving in medical internships or residencies whose eligibility for deferment under Section 682.210(n) has expired. This revision implements section 428(C)(3)(A) of the Act as added by Public Law 101-239.

Section 682.215 Defenses to the Borrower's Obligation to Repay a FFEL Loan

• The Secretary proposed in Section 682.215 to restrict sharply the instances in which borrowers could raise school-related defenses to repayment of a loan made by a bank or other third party. After considering the comments on this proposal and the Department's experience with litigation regarding this matter, the Secretary has determined that it is not desirable at this time to prescribe by regulation a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to FFEL program loans. In the Department's view, whether a defense to repayment of a FFEL program loan is available under State law depends on whether application of State law would frustrate accomplishment of the Federal objectives of the FFEL programs. This requires a case-by-case assessment of individual State laws.

In litigation, the Department has identified four kinds of State laws whose application would not frustrate the accomplishment of FFEL program policies; those State laws are, therefore, not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses if—

(1) The lender had notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan at issue;

(2) The lender had delegated substantial loan-making functions to the school ("an origination relationship" under FFEL program regulations);

(3) The lender and school are corporate affiliates or are otherwise commonly controlled; or

(4) The lender paid a finder's fee or referral fee to the school with regard to the loan.

The Secretary recognizes that whether particular State laws are preempted ultimately must be decided by the courts and that Congress may enact a uniform Federal rule in the future. The Secretary considers the issuance of preemptive Federal regulations to be unwarranted at this time.

Subpart D-Guaranty Agency Programs

Section 682.401 Basic Program Agreement

• The Secretary has revised the proposed regulations to require a borrower to notify the holder of his or her loan, rather than the school, whenever there is a change in the borrower's employer or employer's address.

• The Secretary has revised the proposed regulations to allow a guaranty agency to consider a lender's prior experience in similar Federal, State, or private student loan programs in determining whether to permit the lender to participate in the guaranty agency's program.

• The Secretary has revised the proposed regulations to codify his policy that any transfer of loan guarantees between guaranty agencies may be done only with this approval unless it is a transfer sought by a borrower to secure a single guarantor for all of the borrower's FFEL program loans. The Secretary takes this position in light of the reinsurance implications for the affected agencies and the potential financial liabilities to the Department if such a transfer occurs.

• The Secretary has revised Section 682.401(b)(15) to require that a loan may be assigned only if it is fully disbursed and to clarify to which entities a guaranty agency shall permit a loan to be assigned.

• The Secretary has revised the regulations to require that a guaranty agency must have a written agreement with each eligible lender in its program. As part of the President's initiative to reduce the Federal government's regulatory burden on the private sector, the Secretary and student loan industry representatives are participating in a task force sponsored by the Department of Treasury's Financial Management Service to develop a standardized lender agreement for use in the FFEL programs.

• The Secretary has revised the regulations to delete the requirement that a guaranty agency must submit forms to the Secretary for pre-approval prior to their use. Under the 1992 Amendments, the secretary is required to work with FFEL program participants to develop a common application form and promissory note and other common forms. Guarantee agencies will be required to use these forms when they are developed.

• The Secretary has revised the regulations to require that a guaranty agency must develop and implement appropriate procedures that provide for granting a student deferment as specified in Section 682.210(a)(6)(iv) and Section 682.210(c) (2) and (3). The Secretary expects agencies to require lenders to use these procedures.

Section 682.404 Federal Reinsurance Agreement

• The proposed regulations have been revised to incorporate provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) that require the Secretary to pay guaranty agencies $50 for each account on which the agency performs supplemental preclaims assistance and for which a default claim is not filed by the 150th day after the loan becomes 120 days delinquent.

• The proposed regulations have been revised to require that the Secretary's equitable share of amounts

collected on defaulted loans by guaranty agencies be forwarded to the Secretary within 45 days after the payment is received by the guaranty agency, or a collection agency acting on behalf of the guaranty agency, rather than within 30 days as proposed in the NPRM. These amounts normally are offset (subtracted) from amounts owed by the Secretary to guaranty agencies for reinsurance. Because reinsurance claims are processed monthly, the Secretary believes that it would be virtually impossible, using a 30-day deadline, for amounts received at the end of the month to be included on that month's reinsurance-claims submission.

Section 682.406 Conditions of Reinsurance Coverage

• The Secretary has reinstated the requirement in Section 682.406(a) of the Department's current regulations that a lender's exercise of due diligence in making, disbursing, and servicing a loan is a condition of reinsurance. The Secretary did not intend to delete this requirement.

Subpart E-Federal Guaranteed Student Loan Programs

Section 682.515 Records, Reports, and Inspection Requirements for Federal Guaranteed Student Loan (GSL) Programs Lenders

• The Secretary has revised Section 682.515(c), which governs lender inspections, to correspond to similar inspection requirements for guaranty agencies in Section 682.414(c).

Subpart F-Requirements, Standards, and Payments for Participating Schools

Section 682.603 Certification by a Participating School in Connection With a Loan Application

• The Secretary has revised the regulations to require a school, if it becomes aware that a loan applicant is a member of a religious order, group, community, society, agency, or other organization, to determine if the organization meets the conditions of Section 682.301(a)(2), which would make the applicant ineligible for Federal interest benefits on a Stafford loan. The school may rely on information provided by the applicant.

• The proposed regulations have been amended to reflect the Department's previous policy guidance establishing the minimum and maximum periods of enrollment for which a school may certify a FFEL program loan application.

• The regulations have been revised to specify that a school may not certify an SLS loan application for an undergraduate student after the school receives a notice from the Secretary, pursuant to §668.15(i), that its cohort default rate for the most recent fiscal year is equal to or greater than 30 percent. This restriction does not apply to a student who is seeking an SLS loan to complete a program of study for which he or she previously received an SLS loan. A school may not extend the duration of a program of study to evade the consequences of this restriction.

• The regulations have been amended to prohibit a school from engaging in discriminatory practices when refusing to certify a FFEL program loan application.

Section 683.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

• The Secretary has deleted the reference in Section 682.604(b)(ii) to a student notifying the school on or before the first day of classes that he or she will be delaying attendance. The Secretary has changed the regulations to allow the school to consider any student who begins attendance after the first day of the period of enrollment for which the loan is intended to have maintained eligibility for the loan from the first day of the period of enrollment. The Secretary has also deleted the 30-day time limit for the student to commence delayed attendance, but has modified Section 682.604(d)(3) to provide that a school must return loan proceeds to the lender no later than 30 days after the first day of the period of enrollment if the students does not register for the period of enrollment or does not begin attendance on a delayed basis prior to that date.

• The Secretary has revised Section 682.604(d)(1)(ii)(B) of the proposed regulations to permit but not require a school to hold additional loan proceeds on behalf of a student to help the student manage his or her loan funds, if the student requests that help in writing.

• The Secretary has revised proposed Section 682.604(d) (3) and (4) to provide that the school must return the loan proceeds to the lender no later than 30 days after the first day of the period of enrollment if the student fails to register or does not begin attendance. The NPRM would have provided the school with 60 days to return the loan proceeds.

• The proposed regulations have been revised to incorporate new section 428G(b)(1) of the Act (as added by Pub. L. 101-508) that provides that a school may not present the proceeds of the first installment of a loan made to any student who is a first-year, first-time FFEL borrower for endorsement until 30 days after the first day of the student's program of study.

• The regulations have been revised to provide that a school may not deliver a second or subsequent disbursement to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully has completed the period of enrollment for which the loan was intended.

• The regulations have been revised to allow a school to deliver to the borrower a Stafford or SLS disbursement issued in accordance with Section 682.207(e). The school will be allowed to deliver a late disbursement, within 60 days after the earlier of (1) the end of the period of enrollment, or (2) before the end of the period of enrollment for which the loan was made but after the student ceased to be enrolled at the school on least a half-time basis, unless the lender or guaranty agency has informed the school that a late disbursement is not permitted.

• The regulations have been revised to provide that a PLUS loan, Consolidation loan, or a loan to a student attending a foreign school is not subject to the overaward provisions in Section 682.604(h).

Section 682.605 Determining the Date of a Student's Withdrawal

• The Secretary has revised Section 682.605(b) of the regulations, which establishes rules for determining the date

of a student's withdrawal. If the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than (1) 45 days after the expiration date of the academic term for a school with standard academic terms and (2) no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard academic terms.

Section 682.606 Refund Policy

• Section 682.606(c)(1)(i) of the regulations governing pro rata refunds has not been revised to include a change discussed in the preamble of the NPRM but inadvertently not included in the proposed regulations. The proposed change provided that the reasonable administrative fee a school could subtract from the pro rata refund could not exceed $100. However, this change will not be made because the 1992 Amendments include a definition of pro rata refund that permits the school to subtract the lesser of $100 or 5 percent of tuition, fees, room and board, and other charges assessed the student.

Section 682.607 Payment of a Refund to a Lender

• The Secretary has revised Section 682.607(c) of the regulations, which specifies the deadlines for schools to make timely payments of refunds to lenders on behalf of borrowers, to conform to changes made in Section 682.605(b) for determining the date of a student's withdrawal.

Appendix B-Student Status Confirmation Report

• The Secretary has modified appendix B to define the types of data mandated for use on the report to ensure standardized reporting of data.

Appendix D-Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guaranty Agency Director Letter 88-G-138]

• The Secretary has modified Appendix D to impose a 3-year limit on a lender's option to cure due diligence violations on loans that have lost reinsurance coverage.

• The Secretary has modified Appendix D so that if a loan subject to Section 682.411 has a gap of more than 45 days in collection activities, the due diligence violation may be cured by the receipt of a full payment or a signed repayment obligation from the borrower.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 313 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues and significant technical changes are discussed under the section of the regulations to which they pertain.

Section 682.200 Definitions

Endorser

Comment: Many commenters believed that the inclusion of the definition of "endorser" indicates that an endorser is "co-liable" or jointly liable and suggested that the term endorser be deleted.

Discussion: The definition of "endorser" is not intended to imply that an endorser is jointly liable on the borrower's FFEL. As indicated in the definition, the endorser agrees to repay the loan in the event the borrower fails to do so. In the event the endorser refuses to repay the loan, the endorser is in default at the end of the 180th day of delinquency.

Changes: None.

Comment: A number of commenters stated that the proposed definition of "endorser" makes an endorser a co-maker.

Discussion: The definition of "endorser" in current regulations states that the endorser is secondarily liable for the repayment of the loan. The definition was revised in the NPRM to state more clearly that the endorser is liable only in the event that the borrower does not repay the loan. The Secretary does not believe that this definition suggests that the endorser is a co-maker; the endorser is not a co-maker.

Changes: None.

Escrow Agent

Comment: Many commenters suggested that the Secretary change the proposed definition of "escrow agent." Some commenters suggested that the Secretary revise the proposed definition to include PLUS loans. Other commenters indicated that the Secretary's proposed definition was not specific and appeared to exceed the statutory provision providing that only guaranty agencies and eligible lenders may act as an escrow agent to transmit FFEL funds to the borrower or the borrower's school.

Discussion: The Secretary agrees with the commenters that the proposed definition should include PLUS loans among the types of loans that may be transmitted through an escrow agent. The Secretary also agrees that the definition of "escrow agent" should be clarified to indicate that only a guaranty agency or another eligible lender may act as an escrow agent.

Changes: A change has been made. In the final regulations, the Secretary has revised the definition of "escrow agent" to specify that only eligible lenders or guaranty agencies may act as an escrow agent and that these entities may transmit the proceeds of any FFEL program loan to the borrower or the borrower's school.

Estimated Financial Assistance

Comment: Several commenters noted that, to avoid double-counting, estimated financial assistance should not include veterans' educational benefit payments that are included in the need analysis as part of the student contribution. They also noted that, in addition to SLS and PLUS loans, the definition should be expanded to clarify that

private and State-sponsored loans and nonsubsidized Stafford loans may be used to substitute for the expected family contribution (EFC).

Discussion: The 1992 Amendments have revised the definition of "estimated financial assistance" to include all veterans' benefits paid because of enrollment in an institution of higher education as well as veterans' education benefits as defined in section 480(c) of the Act. In the loan certification process, institutions currently are required to include as estimated financial assistance those veterans' benefits not included in the need analysis formula. The Secretary has decided that, because the changes made by the 1992 Amendments to exclude veterans benefits from the needs analysis formula do not become effective until July 1, 1993, veterans' benefits should not be included as "estimated financial assistance" until these changes are effective. In light of this change in the law, the Secretary does not believe it is appropriate to change the treatment of veteran's educational benefits as recommended by the commenters. This provision of the 1992 Amendments will be reflected in separate proposed and final regulations developed under the requirements of negotiated rulemaking. The Secretary agrees, however, that the definition should be revised to discuss private and State-sponsored loans and unsubsidized Stafford loans.

Changes: The definition has been revised to incorporate the statutory provision in section 428(a)(2)(E) of the Act that allows amounts received by a student from private and State-sponsored loans to substitute for the EFC and to reflect current policy that allows unsubsidized Stafford loans to be used in the same manner.

Comment: A few commenters disagreed with the proposed change to the definition of "estimated financial assistance" that would require schools to include as estimated financial assistance, Perkins loan or College Work-Study (CWS) awards that were offered to a student and declined, unless an award was declined for an acceptable reason. The commenters believe that the aid administrator should not be required to determine whether the student's declination is for an acceptable reason and that declined awards should not be included in the amount of estimated financial assistance.

Discussion: Current regulations require that the amount of assistance that has been or will be awarded to the student must be considered in determining estimated financial assistance. This amount includes all awards offered, even if declined by the student, regardless of the reason. In proposing the definition included in the NPRM, the Secretary acknowledged that there are certain limited circumstances in which a student should be allowed to decline a Perkins loan or CWS award and not have the amount included in the amount of estimated financial assistance used to determine the student's FFEL eligibility. The Secretary believes that these circumstances include, but are not limited to the following: A student declines a CWS award because he or she (1) is unable to work because of family responsibilities such as caring for an elderly parent or dependent child; (2) is carrying a heavy academic workload (perhaps as part of an accelerated program) or is at academic risk and therefore requires special tutoring or other remedial work; or (3) is already employed at a higher paying or an academically or a career-related job. In the case of a Perkins loan, the student may decline a small Perkins loan award to increase the student's eligibility for a Stafford loan and allow the student to avoid simultaneous repayment to multiple sources following completion of his or her program of study. The Secretary believes that excluding all awards declined by the student, as suggested by the commenters, would frustrate the goal of ensuring that students apply for all forms of assistance. Accordingly, the Secretary is adopting the NPRM proposal in the final regulations.

Change: None.

Full-Time Student

Comment: Several commenters suggested that the Secretary revise the proposed definition of "full-time student" to include a student enrolled at more than one school under a consortium agreement or under similar contractual arrangements.

Discussion: The Secretary wishes to clarify that a student who is enrolled in more than one school under a consortium agreement or similar contractual arrangement may be considered a full-time student based on the student's combined enrollment. The determination that the student is full-time must be made by the school from which the student is seeking a degree or certificate and must be made according to standards applicable to all students enrolled in the student's program of study. The Secretary does not believe, however, that a change in the definition of "full-time student" is necessary.

Change: None.

Grace Period

Comment: Several commenters suggested that the definition of "grace period" should be changed to define that term as the period that begins on the day after a Stafford loan borrower ceases to be enrolled on at least a half-time basis and end on the day before the repayment period begins. The commenters also suggested that using the term "participating school" in the definition rather than the term "eligible institution" would mean that a borrower who transfers to an otherwise eligible institution that has elected not to participate in the FFEL programs will use up his or her grace period even though pursuing a postsecondary education.

Discussion: The Secretary agrees that the commenters' suggested change to the definition more appropriately describes the length of the grace period. The Secretary also agrees with the commenters that requiring a student to be enrolled at a participating school rather than at an otherwise eligible institution could unnecessarily penalize the student by prematurely starting the grace period while he or she is still pursuing a postsecondary education.

Changes: The Secretary has revised the definition of "grace period" in the regulations to be the period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-Time Student

Comment: Several commenters recommended that the Secretary revise the definition of "half-time student" to permit a student enrolled in an eligible institution but not at a school participating in the FFEL programs to qualify for a student deferment. The commenters argued that requiring enrollment in a participating school penalizes a student who enrolls in an

otherwise eligible institution that elects not to participate in the FFEL programs. They pointed out that such a student would be required to use his or her grace period and begin repayment on a FFEL program loan while still pursuing a postsecondary education.

Discussion: The Secretary understands the commenters' concerns. However, the Secretary notes that at least half-time enrollment is only one criterion for a "new" borrower, as defined in Section 682.210(b)(7), to qualify for a student deferment. The other criterion is that the borrower has received a Stafford or SLS loan for the period of enrollment for which the deferment is sought. Therefore, a borrower enrolled on less than a full-time basis may not qualify for a student deferment unless the school is participating in the FFEL programs.

Changes: None.

Comment: Several commenters suggested that the definition specify that a student attending more than one school during an academic term under a consortium agreement or similar contractual arrangement may be considered to be a half-time student based on the student's combined enrollment.

Discussion: The Secretary wishes to clarify that a student may be considered to be enrolled half-time based on the student's combined enrollment at more than one institution under a consortium agreement or similar contractual arrangement. However, the Secretary does not believe that a change in the definition of "half-time student" is necessary.

Changes: None.

Holder

Comment: Many commenters suggested that the Secretary should revise the definition of "holder" to specify which entities may be holders of FFEL loans.

Discussion: The Secretary agrees with the commenters that the definition of "holder" should identify the entities authorized to hold FFEL loans.

Changes: A change has been made. The regulations have been changed to state that a holder is an eligible lender in possession of an FFEL loan note that is payable to, or has been assigned to, the lender, including a Federal or State agency or an organization or corporation acting on behalf of the agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Lender

Comment: One commenter stated that the Act prohibits a lender from mailing unsolicited applications only to students and proposed that the prohibition against mailing unsolicited applications to a student's parents should be deleted. The commenter believes that the restriction should not apply to mailings to parents because it is not provided for in the statute and parents require less protection than students.

Discussion: The Secretary believes that an application that is sent to a student's parents is actually sent to the parents on behalf of the student and, therefore, the same protective measures provided for the student are also necessary for the parents. A lack of any restriction on unsolicited mailings to parents would create a loophole in the explicit statutory restriction on unsolicited mailings to students.

Changes: None.

Comment: Many commenters opposed the provision within the definition of "eligible lender" that would allow a lender to include home mortgages that it serviced, but did not hold, in the calculation of the lender's consumer-credit loan portfolio. The commenters indicated that a loan that is serviced, but not held by a bank, is not considered an asset of the bank for other purposes and, therefore, should not be considered an asset for FFEL program purposes.

Discussion: The Secretary has decided that mortgage loans that a lender services, but does not hold, should not be included in the calculation of a lender's primary consumer-credit function because they do not give a true indication of the receivables due the lender.

Changes: A change has been made. The definition of "eligible lender" has been revised to prohibit the inclusion of home mortgages that only are serviced by the lender in the lender's consumer-credit portfolio in determining whether FFEL loans exceed 50 percent of that portfolio.

Comment: Many commenters objected to the proposal in the definition of "eligible lender" that would examine a lender's net income to determine if FFEL program loans constituted the primary consumer-credit function of the lender. The commenters pointed out that using a net-income standard to determine if a lender's primary function is student loans could result in a lender inadvertently violating the standard due to events beyond the lender's control. These events might include a precipitous rise in interest rates or defaults in non-student loan areas that result in student loans representing the majority of the lender's profits.

Discussion: The Secretary agrees that using a net-income standard could result in the kind of inadvertent technical violations the commenters cite.

Changes: A change has been made. The use of the net-income standard to determine the lender's primary consumer-credit function has been deleted from the definition.

National Credit Bureau

Comment: Many commenters indicated that a credit bureau that operates in more than one State but only in a single region is not considered to be a national credit bureau under present reporting standards.

Discussion: The Secretary believes that the national credit bureau reporting requirements will be frustrated if reporting is restricted to a single region of the country. The Secretary agrees with the commenters that to satisfy the statute's intent, the definition must specify that a credit bureau operating in only one region is not a national credit bureau for FFEL program purposes.

Changes: A change has been made. The Secretary has changed the definition of "national credit bureau" in the final regulations to define a national credit bureau as one that operates in more than one region.

Origination Fee

Comment: A number of commenters suggested that the definition of "origination fee" should be modified to reflect the fact that lenders must pay this fee to the Secretary even if the fee is not charged to borrowers.

Discussion: Section 438 of the Act requires that the origination fee be paid by the lender regardless of whether the fee is assessed against the borrower.

Changes: A change has been made. The definition has been modified to reflect the requirement that lenders must pay the origination fee to the Secretary and may assess the fee against the borrower.

Parent

Comment: Many commenters recommended that the proposed definition be expanded to include a stepparent. These commenters believe that it is unfair to expect a stepparent to contribute financially to a student's education and yet prohibit the stepparent from borrowing a PLUS loan on behalf of the student.

Discussion: "Parent" is defined in 34 CFR 668.2 as a student's natural or adoptive mother or father and, under limited circumstances, the student's legal guardian; this includes the legal definition of a stepparent. The Secretary believes the definition of "parent" for the PLUS program should be consistent with this definition.

Changes: A change has been made. The term "parent" is defined in 34 CFR 668.2 for title IV program purposes. Therefore, the definition has been deleted in the final FFEL program regulations.

Period of Enrollment

Comment: Several commenters recommended that this term be defined to codify current policy. The commenters argued that it is necessary to define this term in regulations because guaranty agencies do not define the term consistently. The commenters indicated that schools need guidance to correctly certify FFEL program loan applications.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised the final regulations to define the term "period of enrollment" as the period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term established by the school for which institutional charges are normally assessed.

Post-Deferment Grace Period

Comment: One commenter recommended that the proposed definition be expanded to specify that the borrower is eligible for only one post-deferment grace period regardless of the number of times the borrower qualifies for an unemployment deferment.

Discussion: The Secretary believes this change is unnecessary.

Changes: No change has been made to the definition. However, the Secretary has revised Section 682.210(a)(2)(ii) to include the restriction.

Repayment Period

Comment: One commenter suggested that the term "repayment period" be defined clearly as the term is used frequently throughout the regulations.

Discussion: The Secretary agrees with the commenter that it would be helpful to include a definition of this term that is consistent with Section 682.209(a). Moreover, the 1992 amendments have defined when the repayment period begins in each of the FFEL programs.

Changes: The final regulations have been revised to reflect the change made to the Act by the 1992 Amendments. The repayment period for a Stafford loan is now defined as the period beginning the day following the expiration date of the grace period and ending no later than 10 years from that date. For an SLS loan, the repayment period is defined as the period that begins on the date of the last disbursement of the loan and ends no later than 10 years from that date. For a PLUS loan, the repayment period begins on the date the loan is disbursed and ends no later than 10 years from the beginning date of the repayment period. For a Consolidation loan, the repayment begins on the date the loan is disbursed and ends no later than 12, 15, 20, 25, or 30 years from the beginning date of the repayment period, depending upon the sum of the amount of the Consolidation loan and the unpaid balance on other student loans. Corresponding changes have been made in Section 682.209(a). Any period of deferment or forbearance is not included in the statutory maximum repayment period.

School

Comment: One commenter suggested deleting the phrase "public or private nonprofit" from the definition. The commenter pointed out that this phrase was unnecessary because the definition of institution of higher education contained in 34 CFR part 600 contained this element.

Discussion: The Secretary agrees with the commenter that it is unnecessary to include this phrase.

Change: The phrase "public or private nonprofit" has been deleted from the definition.

Comment: One commenter objected to including a hospital or health care facility in the definition of "school." The commenter believes that attendance in a program of study at such a facility is approved only for deferment purposes.

Discussion: The 1992 Amendments repealed the definitions of "institution of higher education" and "vocation school" in sections 435 (b) and (c) of the Act. The definition of "institution of higher education" is now in section 481 of the Act and does not include hospital and health care facilities. Therefore, the Secretary now agrees with the commenter that the reference to hospitals and health care facilities should be deleted.

Changes: The reference to a hospital or health care facility has been deleted from the definition of "school."

Comment: Many commenters suggested that the Secretary revise the proposed definition of "promote the availability" as it relates to the definition of "school" as a way to prevent commissioned salespersons from providing application forms or other FFEL loan information to enrolled students as well as to prospective students.

Discussion: The Secretary agrees that enrolled students should receive the same protection from commissioned salespersons promoting the availability of FFEL loans that prospective students receive.

Changes: A change has been made. The Secretary has revised the final regulations to prevent a commissioned salesperson from promoting the availability of FFEL loans to enrolled students.

Comment: A few commenters objected to the proposed expansion of the prohibition on activities of commissioned salespersons. The commenters argued that the proposed language would prevent commissioned salespersons from providing a school catalog to a prospective student because the catalog contains information on student financial aid, including the FFEL programs.

Discussion: The Secretary does not intend to prevent commissioned salespersons, as part of their recruitment activities, from distributing school catalogs that may contain general information regarding student financial aid. The Secretary believes, however, that the proposed language is needed to restrict commissioned salespersons from activities such as providing individuals with financial aid applications, assisting them with the completion of the applications, and assisting them with other aspects of the aid application process.

Change: None.

Temporarily Totally Disabled

Comment: Many commenters suggested that the 90-day time period for which a borrower must be unable to work, earn money, or attend school resulting from an injury or illness was unreasonably long. The commenters suggested that a 30-day time period was more equitable.

Discussion: The Secretary agrees that the proposed minimum 90-day period that a borrower must be totally disabled to satisfy the definition of "temporarily totally disabled" may be too long. The Secretary proposed this standard to be consistent with the 90-day period, required by section 435(g)(2) of the Act, to qualify for a deferment based on the disability of a dependent. The Secretary agrees that the impact of a borrower's totally disabling condition on his or her ability to repay a FFEL program loan might be much more immediate than the financial impact of a borrower's dependent's disability. However, the Secretary believes that 30 days is too short a period of time, because the borrower would not have yet missed a payment by the close of a 30-day period.

Changes: A change has been made. The Secretary has reduced from 90 days to 60 days the minimum time period that a borrower must be temporarily totally disabled to qualify for the temporarily totally disabled deferment.

Comment: A number of commenters suggested that the phrase "but not for a period of more than three years" be added at the end of the definition of "temporarily totally disabled". The commenters said this should be done to provide a limit to the temporarily totally disabled deferment that was consistent with the statutory deferment provisions.

Discussion: The Secretary does not agree that the three-year maximum should be included with the definition. That limitation is codified in 34 CFR 682.210(b)(1)(iv). In addition, because the criteria for a borrower to be considered temporarily totally disabled differs from the criteria necessary for the borrower to receive a deferment based on the condition of the borrower's spouse or dependent, to include the three-year maximum in the definition could cause unnecessary confusion. For example, the period for which a borrower may receive a deferment based on his or her own total temporary disability, is limited to a reasonable period to recover from an injury or illness up to 3 years. However, a total temporary disability deferment based on a spouse's or dependent's condition is contingent only upon whether the condition is such that the spouse or dependent "during a period of injury or illness of not less than 3 months, requires continuous nursing or similar services." See section 435(g)(2) of the Act.

Changes: None.

Totally and Permanently Disabled

Comment: Many commenters objected to the Secretary further restricting the conditions under which a borrower may receive a loan repayment cancellation by incorporating the phrase "or attend school" in the definition of "totally and permanently disabled."

Discussion: The Secretary does not believe that the phrase "or attend school" further restricts the conditions to receive a loan repayment cancellation for a borrower who is totally and permanently disabled. The Secretary notes that section 435(g) of the Act defines "temporarily and totally disabled" as an individual who is unable to work or attend school. The Secretary does not believe it was the intent of Congress to allow loan cancellations to be based on less restrictive requirements than those required by statute to receive such a deferment.

Changes: None.

Undergraduate Student

Comment: A few commenters recommended that the Secretary redefine the term "undergraduate student." The commenters recommended deleting the phrase "designed to lead to a first degree" because they believe it might be misinterpreted. They pointed out that a baccalaureate degree could be a second degree for a student who previously received an associate's degree and that a student seeking a second baccalaureate degree is still considered to be an undergraduate student. Another commenter objected to considering a student in "any other length program" as an undergraduate student only for the first four academic years. The commenter was concerned that students enrolled in short-term vocational programs would be considered graduate students if they were enrolled for more than four of the school's academic years. The commenter also pointed out that a student who took longer than four years to complete a baccalaureate degree would be considered a graduate student after the fourth year.

Discussion: The Secretary agrees with the commenters that the proposed definition may be misinterpreted. The Secretary did not intend that a student enrolled in a succession of short-term vocational programs that extend beyond four of the school's academic years be considered a graduate student. The Secretary also did not intend that a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level could be considered a graduate program. The Secretary also agrees that the language "leads to a first degree" also lends itself to differing interpretations. The Secretary intends that a student enrolled in a second baccalaureate degree program or in a first baccalaureate degree program following completion of a certificate, diploma, or associate's degree program be considered an undergraduate student.

Changes: The definition of "undergraduate student" has been revised to include a student who is enrolled at a school in a program of study at or below the baccalaureate level that is designed to lead to a degree or certificate at or below the baccalaureate level and that normally is completed in four academic years or less.

Section 682.201 Eligible Borrowers

Section 682.201(a)

Comment: Many commenters believed that since proposed Section 682.201(a) did not expressly state that a borrower must provide his or her social security number as a condition for Stafford or SLS loan eligibility, a social security number no longer was required. The commenters indicated that without a social security number, their skip-tracing, credit-bureau reporting, and other collection activities would be impaired significantly.

Discussion: Although proposed Section 682.201(a) does not expressly require a borrower to provide his or her social security number as an eligibility requirement for a Stafford or an SLS loan, it does require that the borrower meet the eligibility requirements contained in 34 CFR part 668. The provisions of 34 CFR 668.32(a)(1) require the borrower to report his or her social security number to the lender on the statement of educational purpose. The Secretary does not believe that it is necessary to repeat this requirement in the FFEL program regulations as it is required in the regulations governing all the student financial assistance programs authorized under title IV of the Act.

Changes: None.

Section 682.201(a)(2)

Comment: Many commenters objected to including incarcerated students in Section 682.201(a) as eligible borrowers. The commenters argued that due to the difficulty involved in working with correctional institutions to acquire an "unconditional release date," all of those students should be ineligible until they no longer are incarcerated. Several commenters also noted that incarcerated borrowers are likely to encounter difficulty locating employment, thus making it unwise, and not in the best interest of the FFEL programs, to make loans to those students.

Discussion: The 1992 Amendments now prohibit incarcerated students from receiving title IV student loans.

Changes: The provision providing for the eligibility of incarcerated students has been deleted.

Section 682.201(a)(3)

Comment: Several commenters suggested that the Secretary amend the requirement that a borrower have his or her need for a Stafford loan determined, and if determined to have need file an application for a Stafford loan, before being determined eligible for an SLS loan. The commenters recommended that the Secretary codify policy guidance provided in Dear Colleague Letter GEN-88-34 that exempted from this requirement borrowers who have need of less than $200.

Discussion: The Secretary agrees with the commenters that an applicant for an SLS loan should not be required to file an application for a Stafford loan if the borrower has need of less than $200. The Secretary believes this exemption is consistent with section 428(j) of the Act, which provides that a lender of last resort is not required to make a Stafford loan to a borrower who has need of less than $200.

Changes: A change has been made in what now appears as Section 682.201(a)(2) of the regulations. The Secretary has revised the definition of "eligible borrower" to provide that a borrower who has need of less than $200 is not required to file an application for a Stafford loan before applying for an SLS loan.

Section 682.201(a)(4)

Comment: Many commenters suggested that the Secretary define or itemize the exceptional circumstances under which a dependent undergraduate student's parents are likely to be precluded from borrowing under the PLUS program as a way to determine whether the student is eligible for an SLS loan.

Discussion: The Secretary believes that a restrictive list of the criteria for determining a dependent undergraduate student's eligibility for an SLS loan should not be included in the regulations because exceptional circumstances might arise that are not covered by the regulations. The Secretary believes that the most equitable way to administer this provision is by providing examples of exceptional circumstances in the regulations while giving the financial aid administrator the discretion to determine, on a case-by-case basis, if other equally acceptable exceptional circumstances exist. Examples of exceptional circumstances include, but are not limited to (1) situations in which the parent is denied a PLUS loan because the parent receives public assistance; (2) the parent is totally and permanently disabled and receives only disability benefits as income; (3) the parent is incarcerated; or (4) the parent is unable to borrow because his or her whereabouts are unknown. Under no circumstances may a financial aid administrator certify a dependent undergraduate student for an SLS loan if the student's parents refuse to borrow a PLUS loan and no exceptional circumstances exist.

Changes: A change has been made in what now appears in Section 682.201(a)(3) of the regulations. The Secretary has revised the regulations to incorporate examples of exceptional circumstances that may be used to determine a dependent undergraduate student's eligibility for an SLS loan.

Section 682.201(a)(5)

Comment: Several commenters objected to the proposal to require, as a condition to receive additional FFEL program loans, that a borrower reaffirm a FFEL debt that previously was canceled due to the borrower's total and permanent disability or was discharged in bankruptcy. These commenters suggested that a person who had become disabled may need additional training to be able to secure gainful employment. They also believe the policy was inconsistent with the "fresh start" principle of consumer bankruptcy and the reaffirmation procedures in section 524 of the Bankruptcy Code. The commenters suggested that a borrower who had his or her loan discharged in bankruptcy on grounds of hardship may need to return to school to acquire the skills necessary to secure gainful employment and that forcing the individual to reaffirm prior debts would be a disincentive to returning to school.

Discussion: The Secretary believes that the requirement that a borrower reaffirm a FFEL debt previously canceled is consistent with the principles underlying 34 CFR 668.7(a)(7) regarding the eligibility of defaulted borrowers-e.g., that a borrower who has not satisfied a previous FFEL debt, for whatever reason, should not receive new loans. Furthermore, the Secretary believes that a borrower who has benefitted from having all or part of a loan unilaterally written-off by the Secretary or a guaranty agency should be required to reaffirm the written-off debt before receiving additional Title IV loans.

Changes: A change has been made in what now appears in Section 682.201(a)(4) of the regulations. The regulations have been revised to include a provision to require a borrower to reaffirm any FFEL program debt previously written off before receiving additional FFELs.

Section 682.201(c)

Comment: One commenter suggested that the Secretary revise the criteria under which a loan may be consolidated in a Consolidation loan. The commenter suggested that a borrower be allowed to consolidate a loan that is more than 90-days delinquent at the time the Consolidation loan is made rather than requiring that a loan not be more than 90-days delinquent at the time of application for the Consolidation loan. Another commenter recommended that the Secretary permit a borrower who is more than 90-days delinquent on a loan to borrow under the Consolidation loan program to prevent default. The commenter suggested offering this option to borrowers as part of the supplemental preclaims assistance (SPA) effort.

Discussion: The Secretary's proposed regulations governing Consolidation loan eligibility in Section 682.201(c) were consistent with former section 428C(a)(3)(A)(ii) of the Act, which stipulated that, to be eligible for loan consolidation, a borrower may not be more than 90-days delinquent on a loan to be consolidated at the time the borrower submits an application for a Consolidation loan. However, the 1992 Amendments changed section 428C(a)(3)(A)(ii) of the Act to delete the "90-day delinquent" provision and provide for the eligibility of a delinquent or defaulted borrower who will re-enter repayment through loan consolidation.

Changes: The regulations have been revised to reflect the change in the definition of eligible borrower for Consolidation loans made by the 1992 Amendments.

Section 682.202—Permissible Charges by Lenders to Borrowers

Comment: One commenter suggested that the Secretary eliminate the words "by lenders" in the title because interest may be charged, interest may be capitalized, and late charges or collection charges or both may be assessed by a guaranty agency after it pays a default claim on a loan. The commenter stated that it would be useful to make the agency's authority to assess these charges explicit in the title of this section.

Discussion: The Secretary does not agree that the title of this section of the regulations should be revised so as to clarify a guaranty agency's authority to assess a borrower these charges because not all the costs listed in the regulations (i.e., origination fees and refinancing fees) are charged by guaranty agencies. The Secretary also believes that an agency's authority to assess collection charges and capitalize interest are adequately addressed elsewhere in the regulations.

Changes: None.

Section 682.202(a)

Comment: Many commenters suggested that the interest rate on a Stafford loan with an 8 percent interest rate should increase to 10 percent under proposed Section 682.202(a)(1)(i)(D) if a default claim is paid on the loan after the repayment period begins but before the 4-year period elapses that dictates when the interest rate changes to 10 percent.

Discussion: Section 427A(d) of the Act only authorizes a change in the interest rate at the end of four years after the beginning of repayment, even if a default claim has been paid on the loan.

Changes: None.

Comment: Many commenters suggested that Section 682.202(a)(5) of the NPRM should be modified to reflect that lenders may charge an actual interest rate on a Consolidation loan that is lower than the interest rate calculated under section 428C of the Act.

Discussion: The NPRM appears to prohibit a lender from charging a lesser interest rate than the interest rate calculated under section 428C of the Act. However, section 427A(f) of the Act clearly states that a lender may charge a lesser rate than the one specified in section 428C of the Act.

Changes: A change has been made. The regulations have been revised to clarify that a lender may charge a lower interest rate on a Consolidated loan than the rate specified in section 428C of the Act.

Comment: Many commenters suggested that a provision should be added to the regulations for variable interest rate loans that are based on the 91-day Treasury bill rate plus 3.25 percent that changes each January 1.

Discussion: A number of variable interest rate PLUS and SLS loans made after the enactment of the 1986 Amendments but before the enactment of the Technical Amendments remain subject to a calendar-year adjustment of the variable interest rate based on the 91-day Treasury bill method that existed in section 427A(c)(4) of the Act during this period. Such a loan remains subject to this variable-rate adjustment, as stated in the borrower's promissory note, for the life of the loan unless the borrower chooses to refinance under the current interest rate provisions. If a borrower whose interest rate changes each January 1 refinances his or her loan, that loan may not revert back to the interest rate provisions applied to the borrower's original loan.

Changes: A change has been made. The final regulations have been revised to reflect the interest rate provisions for those borrowers whose interest rates change each January 1.

Comment: A number of commenters noted that the 12 percent ceiling on variable interest rate PLUS and SLS loans was not mentioned in the proposed regulations.

Discussion: The Secretary agrees with the commenters that the provisions of section 427A(c)(4) of the Act related to the variable interest rate ceiling for PLUS and SLS loans should be included in the regulations.

Changes: A change has been made. The final regulations will clarify that a 12 percent ceiling applies to variable-rate PLUS and SLS loans. The Secretary has also amended the regulations to reflect the new variable interest rate ceilings of 10 percent for PLUS loans disbursed on or after October 1, 1992 and 11 percent for SLS loans disbursed on or after October 1, 1992, resulting from the 1992 amendments.

Section 682.202(b)

Comment: Many commenters suggested that the regulations should be modified to provide for the capitalization of interest from the beginning of the repayment period until the first payment due date when the lender receives late notification that the borrower has dropped below half-time enrollment. The commenters also suggested that the regulations permit capitalization of interest accruing on SLS loans during periods of student deferment and on nonsubsidized Stafford loans during periods of student deferment and during the grace period if the borrower agreed to make payments but (1) failed to do so, and (2) failed to respond to a notice of delinquency stating that the lender plans to capitalize the interest accruing during the remainder of the deferment period.

Discussion: Previous guidance from the Department in Dear Guaranty Agency Director Letter 88-G-138 and Dear Colleague Letter 90-G-175 allowed lenders to capitalize interest in these instances. Many program participants have adopted these practices. While the Secretary remains concerned about the effects of capitalization on borrowers, the Secretary agrees that a borrower's failure to honor his or her obligation to make a promised payment or to respond to a delinquency notice sent by the lender warrants this approach.

Changes: A change has been made. Section 682.202(b) has been modified to reflect the Department's decision to permit lenders to capitalize interest under these circumstances.

Section 682.202(c)(4)

Comment: Many commenters suggested that the phrase "the portion of loan proceeds which are" be deleted and replaced with the phrase "any full disbursement". The commenters argued that the proposal does not agree with earlier guidance provided by the Department in a Dear Colleague letter. They believe the suggested change will ensure that only full disbursements returned to the lender or not delivered to the borrower will trigger a refund of origination fees.

Discussion: The Secretary agrees with the commenters. Guidance provided by the Department in Dear Colleague Letter Gen-90-93, Q&A 78, stated that if an institution negotiated the original loan check because the student was eligible for a portion of the original disbursement, the lender was not required to refund the amount of the origination fee attributable to the portion of the loan returned to the lender for which the student is no longer eligible. If the student is ineligible for the entire amount disbursed or the institution otherwise chooses to return the original loan check and request a revised check, the lender must refund the amount of the insurance premium and origination fee that is attributable to the amount of the loan for which the student is no longer eligible to the student's account.

Changes: A change has been made in the final regulations in what is now Section 682.202(c)(5) to reflect the guidance provided in Dear Colleague Letter Gen-90-93, Q&A 78.

Section 682.202(e)

Comment: A few commenters suggested changing "a lender" to "any lender" to prevent misinterpretation of the one-time refinancing fee. The commenters believe this clarification is necessary because there may be more than one lender involved in refinancing.

Discussion: The Secretary does not believe that the regulations preclude a lender, or more than one lender, from charging a borrower a $100 fee for separate refinancing transactions. For example, if a borrower refinances different loans through the same lender over a period of years, the lender may charge the borrower a fee for each refinancing transaction. Similarly, if a borrower refinances different loans through different lenders, each lender refinancing a loan for the borrower may assess the borrower the $100 fee. The regulations permit only the lender refinancing the loan to charge the borrower the fee.

Changes: None.

Section 682.202(g)

Comment: Several commenters objected to proposed Section 682.202(g), which would permit lenders to require borrowers to pay the costs normally associated with routine collection activities.

Discussion: The Secretary agrees with the commenters. The Secretary expects lenders to cover the routine collection costs associated with preparing letters and notices or with making local and long-distance telephone contact with

the borrower through earnings made on the loans. The Secretary will allow only extraordinary costs, such as telegrams, attorney's fees, and court costs to be passed along to the borrower.

Changes: A change has been made. The final regulations have been revised to contain the same language as current regulations except for the addition of a reference to long-distance telephone calls, which the Secretary believes are routine collection costs.

Section 682.204 Maximum Loan Amounts

Comment: Several commenters asked the Secretary to clarify that annual loan amounts for a Stafford loan borrower are based on the borrower's academic standing in the program in which he or she currently is enrolled.

Discussion: The Secretary agrees with the commenters. If a borrower has received a baccalaureate degree and then subsequently enrolls in a second baccalaureate program, that borrower is eligible only for $2,625 annually until he or she is considered a third-year student in the second program.

Changes: The regulations have been revised to reflect that the Stafford loan annual amounts are based on the borrower's academic standing in the program in which he or she is currently enrolled.

Comment: A few commenters recommended that "a borrower" should be revised to "each borrower" in Section 682.204(c) to clarify that the PLUS annual loan limit does not restrict a parent from borrowing for more than one dependent.

Discussion: The Secretary agrees with the commenters' recommendation. The Secretary also notes that the 1992 Amendments repealed the annual and aggregate limits on the amount a parent may borrow in the PLUS programs, for loans on which the first disbursement is made on or after July 1, 1993.

Changes: The regulations have been revised to clarify that a parent may borrow up to $4,000 for each dependent student in the family for any academic year and up to a total of $20,000 for each dependent student.

Comment: A number of commenters recommended deleting the provision to attribute Consolidation loan amounts to the borrower's Stafford, SLS, and PLUS loan maximums in proportion to the amounts of the underlying loans consolidated. They indicated that neither lenders nor guarantors could be expected to track this data. They argued that it is unreasonable to expect borrowers to keep track of the information and report it to subsequent FFEL lenders. Furthermore, they believe no enforcement mechanisms exist for carrying out this provision.

Discussion: The Secretary disagrees. The Secretary believes that lenders are able, through the certified statement provided by other lenders during the consolidation process, to determine the amounts of underlying loans that have been consolidated. Guaranty agencies must require their lenders to submit data that allows the agency to track a borrower's aggregate loan amounts, in accordance with section 428C(a)(3)(B)(ii) of the Act and these regulations. A guaranty agency's ED form 1130 report submissions will be subject to review by the Secretary to ensure compliance with this provision.

Changes: None.

Section 682.205 Disclosure Requirements for Lenders

Comment: Some commenters suggested that this section be modified to prohibit lenders from charging the borrower for the costs incurred in making required disclosures concerning the loan.

Discussion: Lenders are required to make certain disclosures to borrowers before they enter repayment. However, the cost of making these disclosures is considered a normal cost of doing business and may not be charged to the borrower under Section 682.202 and is prohibited under Section 682.205(d).

Changes: None.

Section 682.205(a)(1)

Comment: Commenters overwhelmingly objected to the requirement that a borrower must provide the lender with a written acknowledgement of his or her receipt and understanding of the disclosure information that the lender is required to provide the borrower before the lender may disburse the loan. The commenters believe that imposing this additional step after the lender provides the required disclosure information and before the loan disbursement is made will be extremely burdensome for the school, the lender, and the borrower. They argued (1) that the requirement would impose another item for lenders to monitor; (2) that borrowers' signed acknowledgements would not be received in a timely fashion, which would result in the expiration of loan guarantees and requiring borrowers to reapply; and (3) that students' and schools' receipt of loans would be delayed significantly. School commenters noted that the terms and conditions and other information related to the loan are reviewed with new borrowers during the required initial counseling prior to delivery of the loan proceeds and that this provides the borrower with an opportunity to cancel the loan.

Discussion: The Secretary understands that requiring a signed acknowledgement of the initial disclosure prior to loan disbursement could seriously impede the delivery of student loans and frustrate the goal of electronic funds transfer, which the Secretary supports. The Secretary also agrees that confirmation of a borrower's understanding of the terms and conditions of the loan prior to the borrower incurring the debt can be handled successfully during required initial counseling.

Changes: The Secretary has deleted the proposal to require the borrower to provide the lender with a signed acknowledgement of the initial disclosure.

Section 682.205(a)(2)(xvii)

Comment: Some commenters suggested that paragraph (a)(2)(xvii) should specify that the use of a reference table of estimated repayment amounts in disclosing an estimate of a borrower's projected monthly payment is acceptable as stated previously by ED.

Discussion: The Secretary agrees with the commenters that this paragraph should codify existing policy guidance provided in Dear Colleague Letter 86-G-97 that allows a table to be used in disclosing a borrower's estimated cumulative monthly payment.

Changes: A change has been made. The regulations have been revised to adopt this suggestion.

Section 682.205(b)(3)

Comment: A number of commenters suggested that the language of this provision regarding the statement of borrower's rights and responsibilities is misleading and could be construed to imply that borrowers need not repay loans made by school lenders.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has deleted that language to prevent any potential misunderstanding regarding the repayment obligation of borrowers.

Section 682.205(d)

Comment: One commenter recommended retaining the language from current Section 682.205(c) that requires the lender to provide the information that is required to be disclosed by this section at no cost to the borrower.

Discussion: The Secretary agrees with the commenter that this information should be provided to the borrower without charge.

Changes: Current Section 682.205(c) has been restored to the regulations as Section 682.205(d).

Section 682.206 Due Diligence in Making a Loan

Section 682.206(a)(1)

Comment: Some commenters suggested that Section 682.206(a)(1) assumes that there must be a separate application or promissory note or both for each period of enrollment for which FFEL program loan funds are sought. They believe this approach would preclude the possible use of a single, open-ended promissory note for a borrower's entire undergraduate and graduate loan maximum, the use of the Application for Federal Student AID (AFSA) and other approved aid applications, and the use of electronically submitted application data to guarantee and disburse loans. The commenters objected to any regulatory restrictions that would prevent establishing new processing procedures to reduce the administrative burden on applicants, schools, lenders, and guarantors.

Discussion: The Secretary does not believe that this section precludes the possible use of a single application or promissory note or both or the use of electronically transmitted data. The Secretary actively encourages examination of the use of any approach that may streamline and improve the student aid delivery system. In working with the community in the development of common forms, the Secretary will examine the use of electronically submitted data, as well as other concepts.

Changes: None.

Section 682.206(b)

Comment: One commenter suggested adding a new provision prohibiting a lender, school, or guaranty agency from obtaining a borrower's power of attorney to complete a FFEL loan application on behalf of the borrower. The commenter argued that it is unreasonable to expect a student to understand the rights and obligations of a borrower of a FFEL program loan if the school or another party completes the application or promissory note.

Discussion: The regulations prohibit the use of a power of attorney to endorse a loan check or to approve the transfer of loan proceeds to the borrower's account using electronic funds transfer unless the borrower is enrolled in a study-abroad program approved for credit at the home institution at which the student is enrolled. See Section 682.207(b)(2). The Secretary believes that this restriction provides sufficient protection for the borrower. The Secretary also believes that the use of power of attorney to complete an application or promissory note is useful for the student in some circumstances and should not be totally precluded. For example, power of attorney was used extensively for completing applications by borrowers serving in Operation Desert Shield or Operation Desert Storm.

Changes: None.

Section 682.206(c)

Comment: Several commenters recommended that Section 682.206(c) of the regulations be revised to specify that in determining a borrower's eligibility for a loan amount, the lender may not approve a loan for more than the borrower requests or shows financial need, for, or the annual loan maximum. The commenters cited many instances of borrower requests for loans less than the annual loan maximum being ignored. They also believe that it should be emphasized that the lender is responsible for monitoring the borrower's approved loan amount based on the borrower's remaining financial need and annual loan maximums. The commenters believe this is particularly critical in processing multiple applications for a borrower during a given academic year and in light of the format of many loan applications.

Discussion: The Secretary agrees that a lender must follow the borrower's instructions regarding the loan amount as requested. The Secretary believes that, although it is the school's primary responsibility as part of the certification process to monitor a borrower eligibility based on annual and aggregate loan maximums, the lender also has a responsibility in making a loan to ensure that a borrower does not receive loan proceeds in excess of the annual and aggregate maximums.

Changes: A new section has been added to the regulations to specify that a lender may not approve a loan amount that is more than the borrower requests or qualifies for based on unmet financial need or annual loan maximums.

Comment: One commenter stated that this section assumes that all schools certify Cost of Attendance and Estimated Financial Assistance on a paper application form that is submitted to the lender. The commenter pointed out that in a number of automated application processes already in place, the data information is transmitted electronically by the school. The commenter recommended that the first sentence of the section be revised to require the lender to

review data on the student's cost of attendance and estimated financial assistance provided by the school. Another commenter noted that in many application processing systems the guaranty agency, rather that the lender, receives the data via paper application or electronic transmission. The guaranty agency is the party that reviews the data to determine the loan amount based on annual and aggregate loan limits before issuing a guarantee and notifying the lender. The commenters recommended revising this provision of the regulations to allow the lender or guaranty agency to fulfill this function.

Discussion: The Secretary agrees with the commenter that the regulations should reflect the use of electronic data transmission in the application process. The Secretary also understands that in some application-processing systems the guaranty agency reviews the data before issuing a guarantee. The Secretary does not intend, through the regulations, to preclude a guaranty agency from operating in this manner on behalf of lenders. However, the lender is responsible for reviewing the application and determining the loan amount pursuant to Section 682.206 of the regulations. In the situation described by the commenters, the guaranty agency acts as the agent of the lender in its receipt and review of application data and its determination of borrower eligibility. Therefore, the Secretary does not believe that the regulations should be changed to refer to guaranty agencies specifically.

Changes: The regulations have been changed to clarify that applicant and loan certification data may be provided electronically.

Section 682.206(e)

Comment: Many commenters opposed the requirement in the proposed regulations that prohibited a guaranty agency from requiring cosigners for a Stafford or SLS loan. The commenters noted that nothing in the Act supported such a prohibition.

Discussion: The Secretary agrees with the commenters.

Changes: The prohibition against a guaranty agency requiring a lender to obtain security or endorsement on a Stafford or SLS loan has been deleted from the final regulations.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(b)(1)(i)(B)

Comment: A commenter suggested that regulations governing loan disbursement should require the lender to comply with the disbursement schedule provided by the school or with the recommended disbursement dates provided by the school for a particular borrower on the loan application.

Discussion: Under section 428G(c)(1) of the Act, the lender must follow the disbursement schedule provided by the school under section 428(a)(1)(A)(i)(III).

Changes: The regulations have been revised to provide that a lender must disburse a Stafford or SLS loan in accordance with a disbursement schedule provided by the school.

Section 682.207(b)(1)(ii)(A)

Comment: One commenter suggested that all FFEL checks should be co-payable, including PLUS. The commenter believes that the school should have the opportunity to verify the eligibility of the student on whose behalf a parent is borrowing a PLUS loan before the parent receives the loan proceeds.

Discussion: As a result of the 1992 Amendments, section 428B(c) of the Act now requires that PLUS checks be made co-payable to the borrower and the school. However, in regard to the other FFEL programs, section 428(b)(1)(N) of the Act prohibits the Secretary from requiring co-payable checks.

Changes: The regulations have been revised to require PLUS checks to be made co-payable to the borrower and the school.

Comment: Many commenters supported the Secretary's deletion of the phrase "other written approval" from the regulations because they believe it is ambiguous. One commenter supported the deletion of the phrase and also noted that this paragraph allows co-payable checks only if the guarantor requires co-payable checks. The commenter recommended that since many lenders make loans guaranteed by more than one guarantor, it may be more appropriate to allow the co-payable decision to be made by the lender rather than the guaranty agency. Several other commenters asked whether the deletion of "or other written approval" would prevent delivery of the borrower's loan process through the use of direct deposit of a borrower's loan funds.

Discussion: The Secretary notes that the deletion of the phrase "or other written approval" would prevent the delivery of loan proceeds through the use of direct deposit into a borrower's account at a financial institution because the borrower's signature on a direct deposit form does not constitute a personal endorsement. Because the Secretary believes that the use of the direct-deposit delivery mechanism is important for borrowers who are attending classes at another institution under an agreement with the borrowers' home institution, he has decided to revise the regulations to include the phrase "or other written certification." This phrase, which is consistent with the language of section 428(b)(1)(N) of the Act, is intended to permit the use of direct deposit based on the borrower's written certification on a direct deposit form. The Secretary agrees that a lender of a Stafford or SLS loan should be allowed to establish a policy of making Stafford or SLS loan checks co-payable if co-payable checks are not required by the guaranty agency and the guaranty agency has no objection to the lender adopting such a policy.

Changes: The regulations have been revised to include the phrase "or other written certification" to provide for the use of direct deposit of a borrower's funds into his or her account at a financial institution. The regulations also have been revised to allow a lender to establish a policy of making Stafford or SLS checks co-payable if this is not required by the guaranty agency.

Section 681.207(b)(1)(ii)(B)

Comments: Several commenters supported the Department's proposed requirement that the borrower approve the release of loan proceeds by electronic funds

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transfer to an account that requires written approval by the borrower for the release of those funds from the account. However, the commenters did not agree with the requirement of a separate "written" approval statement from the borrower. The commenters suggested that the term "written" be deleted and that the phrase "negotiated in accordance with Section 682.604(c)(3)(ii)" be added at the end of the provision. They believe that the additional language would clarify that the school is required to document the receipt and application of the funds to the borrower's account with the school. They recommended that the requirement that the borrower approve the release of loan proceeds by electronic funds transfer be moved from Section 682.207 to Section 682.604 to clarify that the responsibility for obtaining the borrower's authorization to release funds and maintaining evidence of the authorization rests with the school.

Discussion: The Secretary believes that the requirement that the borrower give written approval for release of the loan proceeds is consistent with the statutory requirement that funds be disbursed in a manner that requires "the endorsement or other certification by the student." See section 428(b)(1)(N) of the Act. The Secretary has clarified the school's responsibility to secure and retain the borrower's written authorization in Section 682.610(b)(9)(iv).

Changes: None.

Comment: A number of commenters objected to the proposed requirement that funds disbursed by electronic funds transfer be disbursed to a restricted account maintained by the school from which funds cannot be released without the borrower's written approval.

Discussion: Section 428(b)(1)(N) of the Act requires that funds are to be disbursed to students by a means that "requires the endorsement or other certification by such student." The Secretary has decided that a single written approval for each type of loan (e.g., Stafford or SLS) is sufficient for all disbursements. This written approval to release loan proceeds from the school's restricted account must be a separate statement and may not be incorporated into the loan application.

Changes: None.

Section 682.207(b)(1)(v)(B)

Comments: A few commenters expressed concern about the proposed requirement governing loan disbursement to a borrower enrolled at a foreign institution as part of a program of study at a school located in the United States. Under these circumstances, the loan check must be disbursed to the school in the United States and the borrower's endorsement on the loan check must be secured before the loan proceeds can be applied to the borrower's account with the school. The commenters understand that, under current regulations, the school has the option of directly depositing the check into the borrower's account at a financial institution. The borrower then pays the school from that account. The commenter recommended that the proposed regulations be revised to allow the school to secure the borrower's approval for the use of direct deposit earlier than 30 days before the date the borrower is scheduled to enroll because most students involved in these programs generally have left the country and are in school by the time loan funds are disbursed.

Discussion: The 1992 Amendments changed section 428(b)(1)(N) of the Act to provide that in the case of a student in a study-abroad program approved for credit at the home institution at which the student is enrolled, the lender must, at the borrower's request, disburse the loan directly to the borrower. Alternatively, at the borrower's request, the lender shall disburse the loan proceeds to the borrower's home institution if the borrower provides his or her power-of-attorney to an individual not affiliated with the institution to endorse the borrower's check or complete an EFT authorization. The endorsement of the loan checks or completion of an EFT authorization by an individual under a power-of-attorney must be done according to the requirements contained in Section 682.604(c)(2) and (3). The Secretary believes that these changes to the disbursement and delivery provisions for students studying abroad under the auspices of the home institution do not prohibit the use of the option of directly depositing the borrower's loan proceeds into the borrower's account at a financial institution as previously authorized. For borrowers who are not first-time borrowers subject to delayed delivery of Stafford and SLS loan proceeds, nothing contained in Section 682.604(c)(2) prevents the school from securing a borrower's approval for direct deposit of a loan check into the borrower's account at a financial institution earlier than 30 days before the first day of classes in the period of enrollment, provided the borrower is registered as a student. The actual delivery of the loan proceeds, however, must be made pursuant to Section 682.604(d) of the regulations.

Changes: None.

Section 682.207(d)(2)

Comment: Many commenters objected strenuously to the proposal to limit the amount of a late disbursement only to the amount needed to cover a student's outstanding charges at the institution. The commenters argued that this creates an unfair economic burden on the student because the student's demonstrated financial need for the period of enrollment for which the loan is intended is based on institutional and non-institutional charges and is not reduced after the last day of classes. The commenters argued that the proposed regulations are not consistent with the disbursement of late awards in the other Title IV programs and do not recognize that a student may have other outstanding debts that resulted from the student borrowing to finance his or her attendance at the school (e.g., paying tuition with a credit card, using private loans for living expenses, etc.).

Discussion: The Secretary agrees with the commenters that a lender making a late disbursement of FFEL loan proceeds should be allowed to recognize more than outstanding institutional charges if the borrower can document additional educational costs he or she incurred that are included normally in a borrower's cost of attendance under section 472 of the Act. The school would be expected to collect and retain documentation from the student supporting the amount of the late disbursement delivered to the borrower. Excess loan proceeds must be refunded by the school to the lender.

Changes: The regulations have been revised to allow a lender to make a late disbursement based on the borrower's documented educational expenses for the period of enrollment if those expenses include costs that are

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normally included in a borrower's cost of attendance under section 472 of the Act.

Comment: A number of commenters agree with the Secretary that the late disbursement policy needs to be standardized. However, they believe the language of the NPRM is unnecessarily complex and should be simplified. They recommended that lenders be allowed to disburse funds up to 60 days after the student has ceased to be enrolled on at least a half-time basis without express guaranty agency approval. Other commenters believe that guaranty agencies should be allowed to establish procedures for requesting and approving late disbursements according to the needs of their program participants and systems.

Discussion: The Secretary agrees with the commenters that the late disbursement policy needs to be simplified and that the guaranty agency should have the option of allowing lenders to make late disbursements. The Secretary believes that, if a guaranty agency does not prohibit late disbursements, a lender should be allowed to make a late disbursement within 60 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended without prior approval of the agency. The Secretary also believes that if the guaranty agency and lender have informed the school that late disbursements are permitted, a school should be able to deliver the loan proceeds to the borrower without obtaining the guaranty agency's or lender's approval on a case-by-case basis.

Changes: The regulations have been revised to provide that if the guaranty agency does not prohibit late disbursements, the lender may disburse loan proceeds within 60 days after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended. The Secretary has also revised Section 682.604(e) to correspond with the changes made to Section 682.208(d) by allowing a school to deliver loan proceeds received within 60 days of the earlier of the dates specified in Section 682.604(e)(1) unless the guaranty agency or lender have informed the school that late disbursements are prohibited.

Section 682.208 Due Diligence in Servicing a Loan

Comment: One commenter recommended that the Secretary regulate servicers as many loans are serviced by third-party servicers.

Discussion: The 1992 Amendments specifically authorized the Secretary to regulate third-party servicers. The Secretary intends to develop these regulations through the negotiated rulemaking process for rules implementing the 1992 Amendments.

Changes: None.

Section 682.208(b)

Comment: Several commenters recommended changing the time period required for credit bureau reporting from 90 days to 150 days of a disbursement. They stated that making credit bureau reporting consistent with the 120-day cancellation rule will prevent many instances of unnecessary reporting in which information submitted to meet the 90-day reporting deadline must be corrected because a loan is subsequently canceled by the 120th day.

Discussion: While it is true that a loan is canceled if the amount disbursed is repaid or the check is not cashed within 120 days, the Secretary believes that 150 days is too long and that the 90-day period is late enough in the disbursement process to prevent the unnecessary reporting of most canceled disbursements.

Changes: None.

Comment: Several commenters indicated that reporting a borrower's delinquency before the 90th day of delinquency substantially increases the unnecessary reporting of borrowers who are in the process of remitting payment or securing the documentation to support a deferment or forbearance. They recommended that reporting the extent of the borrower's delinquency should occur at or after the 90th day of delinquency.

Discussion: The Secretary believes that it would be inconsistent with the intent of Congress and the purpose of credit bureau reporting if only borrowers who are delinquent on their loans by 90 days or more are reported to credit bureaus. The fact that a borrower consistently is late in remitting payments is relevant information to those entities that use credit bureau information. In addition, although the Secretary understands that there might be a delay in the submission of documentation supporting a borrower's eligibility for a forbearance or deferment, he nevertheless believes that the borrower remains responsible for making payments if he or she is unable to submit supporting documentation promptly.

Changes: None.

Section 682.208(c)(1)

Comment: Several commenters suggested that this section be revised to require that a lender respond to any inquiries about a loan from a borrower or endorser within a reasonable time period rather than within the proposed 30 days. They believe that in many cases 30 days is not enough time to research properly a borrower's account, especially if the research involves the originating lender, system transfers, and several subsequent holders. They also believe that in some cases, such as deferment processing, 30 days may be too much time. They recommended that the regulations provide that responses be made within a reasonable time, thus allowing guaranty agencies the flexibility to establish reasonable response times depending on the nature of the inquiry.

Discussion: The Secretary wishes to clarify that the lender's response to a borrower's inquiry by the 30-day deadline may be in the form of a written interim response. The Secretary recognizes that a lender may need more time to research some cases, but believes that it is reasonable to expect some form of response be given to the borrower within this time period.

Changes: None.

Section 682.208(d)

Comment: Many commenters opposed the Secretary's effort in the NPRM to encourage lenders to offer graduated or income-sensitive repayment schedules, citing the increased costs the borrower incurs over time with those schedules. On the other hand, many other commenters applauded the

Secretary's efforts, saying that such an initiative shows sensitivity to the fact that a borrower's income and ability to repay is generally less at the beginning of the repayment period than at the end.

Discussion: The Secretary recognizes that a borrower will pay less over the life of a loan with a level repayment schedule than with a graduated repayment schedule. However, the Secretary also believes that it is critical to establish a repayment habit with borrowers. A repayment schedule that the borrower views as unrealistic might impede that effort and might, in fact, precipitate a default. Therefore, the Secretary will continue to strongly encourage the use of graduated repayment schedules for old borrowers. The 1992 Amendments amended section 428(b)(1)(E)(i) of the Act to require lenders to offer a graduated or income-sensitive repayment schedule to new borrowers after July 1, 1993.

Changes: None.

Section 682.208(f)

Comment: Several commenters objected to the proposed requirement that a lender make what they believe is a highly subjective evaluation of whether the borrower "(knew" or "should have known" that information used to support his or her eligibility was incorrect. The commenters recommended that the regulations be revised to permit a lender to use "substantial facts" to determine whether a borrower has established eligibility for all or part of the loan.

Discussion: The Secretary notes that the proposed requirement that the lender determine whether the borrower "knew" or "should have known" was intended to clarify that the procedures of Section 682.412 should be applied only to: (1) Borrowers who provided false or erroneous information to support their eligibility for insurance coverage and the payment of Federal interest benefits on their behalf, and (2) borrowers who received loan proceeds for which they subsequently were determined to be ineligible because they did not attend school for the period of enrollment for which the loans were intended. The Secretary wishes to distinguish these borrowers from those whose ineligibility resulted from an error made by the school in determining borrower eligibility and certifying the loan application or by the lender in making the loan. In clarifying the application of Section 682.412, however, the Secretary did not intend to require the lender to take action unless it received information about a borrower that could be substantiated by the lender directly or by the school.

Changes: The regulations have been revised to provide that a lender shall follow the procedures in Section 682.412 if it receives information that can be substantiated that the borrower, or, if applicable, the student on whose behalf a parent borrowed, provided false or erroneous data to support his or her loan eligibility or that the borrower received loan proceeds for which he or she became ineligible due to nonattendance.

Section 682.209 Repayment of a Loan

Comment: A commenter suggested there should be a section in this area that addresses combining Stafford loans to allow one payment by the borrower. The commenter also questioned whether loans can be combined in one payment if the loans enter repayment at different times.

Discussion: Nothing in this section prevents a lender from establishing a single repayment schedule for a borrower with multiple FFEL loans. If the lender establishes such a schedule, it must ensure that payments are applied so that each loan is repaid within the 10-year maximum repayment period.

Changes: The Secretary has added language in Section 682.208(d) to clarify that a lender may establish a single repayment schedule for all the FFEL loans that the lender holds for a particular borrower.

Section 682.209(a)(3)

Comment: One commenter stated that there is a great deal of confusion surrounding the establishment of the payment due date following a period of authorized deferment or forbearance and recommended that the Secretary provide clarification in this area.

Discussion: The Secretary has decided that a lender may use the 45-day standard in the regulations for establishing a first payment due date for a borrower completing a deferment or forbearance period.

Changes: A change has been made in the regulations to require the lender to establish a first payment due date that is no more than 45 days following the expiration of the borrower's deferment or forbearance period.

Section 682.209(a)(3)(ii)

Comment: Several commenters noted that the regulations state that the first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins. The commenters noted that this requirement would not be feasible for lenders that have day-specific servicing systems.

Discussion: The Secretary understands that some lenders use day-specific servicing systems and that the 9- and 12-month grace period is calculated on a day-specific basis. For lenders with day-specific systems or with loans that have a 9- to 12-month grace period, the requirement that the first payment due date be no more than 45 days after the first day of the month in which the repayment period begins could result in that date being considerably sooner than 45 days after the end of the grace period.

Changes: The regulations have been revised to specify that a first payment due date established by the lender must be within 45 days of the end of the grace period or, if the lender learns, after the fact, that the borrower has entered the repayment period, no later than 75 days after the lender learns that the borrower has entered the repayment period.

Section 682.209(a)(4)

Comment: One commenter suggested adding a restriction in the last sentence of Section 682.605(b)(3) of the regulations because he felt that the phrase "first failure to submit a lesson" was unclear and subject to misinterpretation.

Discussion: The Secretary agrees with the commenter that the reference to "first failure to submit a lesson" in Section 682.209(a)(4) is unclear and might be interpreted to mean

that the school may grant more than one restoration to in-school status. Under Section 682.605(b)(3), a school may not grant a correspondence student more than one restoration to in-school status after the student fails to submit lessons in accordance with the established schedule.

Changes: The regulations have been changed to reflect that a school may provide a borrower with a one-time restoration to in-school status following the borrower's failure to submit a lesson within the 60-day period after the due date for submission.

Section 682.209(a)(6)

Comments: Many commenters suggested deleting the provision limiting the terms of graduated or income-sensitive repayment schedules. The commenters believe that the Secretary should not prescribe the terms of graduated or income-sensitive repayment schedules because this will limit lenders' use of this optional default management tool.

Discussion: The Secretary believes that the terms imposed on graduated or income-sensitive repayment schedules in Section 682.209(a)(6) merely reflect long-standing Departmental policy prohibiting a schedule that includes large balloon payments. The Secretary believes that assisting a borrower in avoiding default early in the repayment period is meaningless if a graduated repayment schedule with unrealistically large payments precipitates a default later in the repayment cycle.

Changes: None.

Section 682.209(a)(7)(i)

Comment: Several commenters recommended deleting the last sentence regarding the 15-year repayment rule for Federally Insured Student Loans (FISLs) made for periods of enrollment before July 1, 1986. They believe this deletion is necessary because the Secretary indicated in the preamble of the NPRM his intention to waive violations of this rule for pre-1986 FISLs.

Discussion: The Secretary wishes to reiterate that the provision still applies and lenders must comply with it. Through his discussion in the preamble of the NPRM, the Secretary simply intended to clarify that he would waive any violation of this provision of the regulations

Changes: None.

Section 682.209(b)

Comment: Several commenters questioned the Secretary's proposed rule on how a borrower's prepayment of a FFEL program loan should be applied. The commenters recommended that the lender should be allowed to apply the prepayment to unpaid accrued interest before it is applied to unpaid principal. Several other commenters argued that not allowing the lender to apply the prepayment to late changes the borrower may have been assessed conflicted with standard banking practice.

Discussion: The Secretary understands that a borrower making a prepayment might have overdue accrued interest or late charges that have been assessed. The Secretary agrees that a lender receiving a prepayment should have the flexibility to apply the prepayment to cover outstanding interest or late charges before applying it to unpaid principal.

Changes: The final regulations have been amended to clarify that the lender may credit the prepayment first to late charges or collection costs, then to outstanding interest, and then to unpaid principal, unless the borrower otherwise specifies that the prepayment be applied to future installments or as a prepayment of principal.

Comment: Many commenters applauded the proposal that would allow a lender to credit prepayment that equal or exceed three full payments against future installment payments. Several commenters felt that lenders should be able to apply any amount received in excess of a full payment against future installments. Still other commenters favored retention of the existing requirement that lenders apply payments in excess of the amount due to reduce outstanding principal because of the financial benefit to the borrower.

Discussion: The Secretary recognizes the financial benefit to the borrower of having outstanding principal on the loan reduced as quickly as possible. The Secretary also believes, however, that a borrower who makes a large payment generally intends it to be used to satisfy future loan repayment installments. The Secretary believes that these regulations identify a realistic payment-amount-threshold that allows a lender to interpret the borrower's intent for a payment to be applied to future repayment installments. The Secretary also has decided that when a borrower makes such a large payment, without specifying how it should be applied, the lender should have the option to apply the payment either to future installments or as a prepayment of principal.

Changes: A change has been made to Section 682.209(b)(2) to allow the lender, in the absence of direction from the borrower, to apply a payment amount that equals or exceeds three full payments under the repayment schedule either to future installments or as a prepayment of principal.

Section 682.209(c)(1)

Comment: Several commenters recommended that language be included in the regulations to distinguish between loans that have the $360 minimum annual repayment and loans that have the $600 minimum annual repayment. Several commenters suggested including the applicable dates these minimum annual repayment amounts became effective in the regulations to make the distinction.

Discussion: The minimum annual repayment was increased from $360 to $600 by the Postsecondary Student Assistance Amendments of 1981 (sections 531-540 of Pub. L 97-35). The Secretary believes that it is unnecessary to include in the final regulations the $360 minimum annual repayment provision as no new loans are affected. All loans to which the $360 minimum annual repayment provision applies include the minimum annual repayment amount as a term of the promissory note.

Changes: None.

Section 682.209(f)(3)

Comment: Many commenters objected to the requirement that the promissory note be sent to the refinancing lender because consumer-banking laws dictate

that the paid-in-full note be returned to the borrower. Other commenters objected to the requirement that lenders mail a certification statement to the refinancing lender within three days following receipt of a payment-in-full due to refinancing. They believe this proposal would require that a separate payment system be developed to identify a refinanced payment. They indicated that these payments generally are processed through a lockbox. Therefore, most lenders are unable to identify a payment as a refinancing payment and would not be able to comply with the requirement.

Discussion: The Secretary proposed that the lender send the borrower's original promissory note to the refinancing lender as an alternate method of certifying that a borrower's fixed-rate loan had been discharged as provided for in section 428A(d)(4) and section 428B(d)(4) of the Act. However, the Secretary understands that the practice of forwarding an original paid-in-full promissory note to a party other than the borrower is contrary to consumer-banking laws and agrees that the use of this proposed option rather than a certification statement might result in the inadvertent loss of the borrower's promissory note. Therefore, the Secretary has decided to allow the use of a copy of the borrower's original promissory note evidencing the loan as the certification statement. The Secretary believes that the refinancing lender must receive timely notification that a borrower's original loan has been discharged. However, he agrees that three business days might be insufficient time for the original lender to apply the loan proceeds to discharge the original loan and mail the refinancing lender a certification to that effect. Although the Secretary recognizes that payments are generally processed through a lockbox system, and that this might make it more difficult to identify a refinancing payment, he believes that lenders must make the system changes necessary to post the payment and provide the required certification statement to the refinancing lender within the specified time limit.

Changes: Proposed Section 682.209(f)(3)(i) has been deleted. However, lenders are still required to provide either a copy of the borrower's original promissory note evidencing the loan or a statement to the refinancing lender certifying the discharge of the original loan. See sections 428A(d)(4) and 428B(d)(4) of the Act. The regulations also have been revised to provide lenders with five business days to post a refinancing payment and provide the certification statement to the refinancing lender.

Section 682.209(h)

Comments: Several commenters noted that the regulations did not reflect section 428C(c)(2)(B) of the Act, which provides that unless a Consolidation loan is being used to discharge at least $5,000 of FFEL programs loans, the Consolidation loan must be repaid in not more than 10 years.

Discussion: The Secretary agrees; this provision of the statute inadvertently was not included in the NPRM. Moreover, the 1992 Amendments have changed this section of the statute to require that such a Consolidation loan must be repaid in not more than 12 years.

Changes: The regulations have been revised to include this statutory provision.

Section 682.209(i)(1)

Comment: A number of commenters objected to the proposal that a refund received by a lender from a school should be used to reduce the borrower's outstanding principal. The commenters stated that general accounting principles, as well as their own system requirements, would require that any outstanding interest be satisfied first. Other commenters felt that this requirement should apply only to Stafford loans because interest would have accrued on nonsubsidized Stafford, PLUS, and SLS loans.

Discussion: The Secretary wishes to note that interest accrues on all loans, but the Department pays the interest for certain periods on subsidized Stafford loans. The Secretary views refunds as "unused loan proceeds" that should be credited against the principal of the loan to create the maximum benefit for the borrower.

Changes: None.

Section 682.209(j)

Comment: A few commenters recommended that the 10-day time period for responding to a certification statement in connection with a Consolidation loan should be changed to 10 business days to allow for adequate auditing of all loan and payment records before issuing the certification.

Discussion: The Secretary agrees with the commenters.

Changes: The regulations have been changed to provide the lender 10 business days to provide the certification.

Section 682.210 Deferment

Comment: One commenter requested that the Secretary clarify why a 6-month certification limitation applies to some deferments (e.g., temporary total disability, dependent's temporary total disability, and unemployment) but not to others.

Discussion: The Secretary strongly believes that a deferment based on a condition that temporarily affects a borrower's ability to repay should be recertified periodically to assure the Secretary that the condition continues. He does not believe that the deferment should be granted automatically for the maximum statutory period as the borrower's situation might no longer warrant the deferment.

Changes: None.

Section 682.210(a)(4)(i)

Comment: The majority of commenters recommended permitting oral requests for deferments provided the lender is required to document these requests in the borrower's file. Many commenters felt that requiring a borrower to request a deferment in writing would delay significantly the time it takes to process a deferment.

Discussion: The Secretary agrees with the commenters that it is appropriate to allow the lender to accept the borrower's verbal request for a deferment since the lender may not grant the deferment until the borrower has submitted

complete documentation supporting his or her eligibility for the deferment.

Changes: A change has been made. The Secretary has deleted "in writing" from Section 682.210(a)(4).

Section 682.210(a)(4)(ii)

Comment: Many commenters supported the concept of allowing lenders to grant deferments based on substantially complete documentation. However, they did not agree with the NPRM proposal and recommended significant changes. Many commenters recommended that the Secretary define the term "substantially complete" because they felt it was overly ambiguous and would lead to inconsistent treatment of borrowers by different lenders. Many commenters objected to the operational difficulties they believe would be associated with retroactively canceling a 60-day "conditional" deferment and repaying interest to the Secretary if the borrower does not complete the deferment process. The commenters indicated that few lenders would choose to use this option because of these operational problems. They recommended instead that the 60-day conditional deferment period be retained even if the borrower does not provide the missing information; the borrower would be expected to resume repayment at the close of the 60-day period. A few commenters recommended that the lender be allowed to grant forbearance to the borrower until the borrower submits the missing information rather than granting a 60-day deferment period that they might have to cancel.

Discussion: The Secretary agrees with the commenters that the term "substantially complete" is somewhat vague. However, the Secretary declined to be more prescriptive in the NPRM expressly to provide lenders flexibility in administering this provision. Further, he does not believe that the term can be defined effectively to address the many situations to which it may apply. The Secretary understands that the lender performs additional work if a borrower fails to provide missing information by the close of the 60-day conditional deferment period and the lender is required to cancel the deferment and repay interest payments paid to the lender by the Secretary. However, the Secretary does not believe that it is in the fiscal interest of the FFEL programs to allow the 60-day deferment period to stand if the borrower does not complete the deferment process. Further, the Secretary is persuaded by the commenters that few lenders will use this option as currently written. Therefore, the Secretary has decided to delete this provision from the regulations. Lenders are reminded that they may grant forbearance until the borrower submits the missing documentation. Once the lender receives complete documentation establishing the borrower's eligibility, a deferment can be granted based on the date the condition entitling the borrower to the deferment first existed in accordance with Section 682.210(a)(5).

Changes: A change has been made. The proposal to allow lenders to grant a deferment based upon substantially complete information submitted by the borrower has been deleted from the regulations.

Section 682.210(a)(6)(iv)

Comment: Several commenters requested clarification of an apparent conflict between proposed Section 682.210(a)(6)(iv) and Section 682.210(c)(2) regarding the use of the anticipated graduation date (AGD) as the ending date of a Stafford and SLS student deferment. Additional comments included concerns that requiring a separate certification statement for the half-time student deferment represents unnecessary duplication since a condition for receipt of that deferment is that the borrower is also receiving a loan for the intended deferment period and, therefore, a loan application is required. Several commenters supported the proposal to treat a certified loan application as sufficient documentation for a student deferment up through the student's anticipated graduation date for (a) any SLS loan, and (b) a Stafford loan if the guaranty agency's student status confirmation report (SSCR) system includes a mechanism for the school's confirmation of the borrower's student deferment status. A number of commenters supported the concept of a yearly recertification for the student deferment if the guaranty agency does not have an SSCR system that includes a borrower's student-deferment status and emphasized that a yearly recertification of eligibility for the student deferment by the school would represent unnecessary work for schools, lenders, and guaranty agencies, and be a duplication of SSCR enrollment-verification data.

Discussion: The Secretary agrees with the commenters that the use of the loan application to request a student deferment, the use of the school's certification on the loan application to document the borrower's eligibility, and the use of the borrower's anticipated graduation date as the end date of the deferment represents an efficient and reasonably accurate method for granting a student deferment in the Stafford and SLS programs, provided the guaranty agency's student status confirmation report system provides status reports for each borrower with a student deferment. Further, the Secretary has decided that, in the interest of standardizing procedures and reducing the administrative burden associated with student deferments, this same approach should be extended to the PLUS program. The Secretary also agrees with commenters that proposed Sections 682.210(a)(6)(iv) and 682.210(c)(2) are inconsistent in describing the end date of a student deferment.

Changes: A change has been made to Section 682.210(a)(6)(iv) to provide that the AGD date also should generally be considered the end date of a student deferment for a PLUS borrower. In addition, the language of proposed Section 682.210(c)(2) that would have restricted the period of enrollment that may be certified in a single deferment certification to one academic year has been deleted from the regulations and Section 682.210(c) has been revised to provide for the use of the loan application to request and document eligibility for a student deferment in the Stafford, SLS, and PLUS loan programs.

Section 682.210(b)(1)

Comment: A few commenters suggested that the regulations include a complete description of the eligibility requirements for what is popularly referred to as the "summer bridge" student deferment for continuously enrolled borrowers who do not attend classes during the summer months.

Discussion: The Secretary considers the summer months part of the in-school period for borrowers who are maintaining either an in-school status or a student deferment status and who plan to return to school in the fall. For borrowers in a student deferment status, particularly SLS borrowers, the Department has recommended that lenders collect a statement-of-intent-to-reenroll from the borrower to support the lender's continued cessation of collection activity

otherwise required under the due diligence regulations during the summer months. The lender should continue to bill the Department for interest on Stafford loans during this period. If a borrower does not submit documentation supporting continued eligibility for a student deferment within 30 days of the start of the fall term, the lender is required to convert the borrower to repayment. Under these circumstances, the borrower is considered to have ceased enrollment on the last day of the previous spring term. However, the lender is allowed to treat the borrower as entering repayment without the lender's knowledge so that the borrower is not considered retroactively delinquent for a period during which he or she neither has been billed nor has an opportunity to pay. The lender is required to repay ED the interest paid on behalf of the borrower for the summer period. The interest may be capitalized pursuant to the regulations.

Changes: None.

Section 682.210(b)(1)(i)

Comment: Some commenters suggested replacing the term "school" with "eligible institution of higher education," and specifying that this includes vocational school and foreign schools. The commenters stated that they believed this would result in consistency between the requirements for a full-time student deferment and the definition of full-time student in Section 682.200.

Discussion: The Secretary does not agree with the commenters. The definition of "school" found in Section 682.200 properly reflects the statutory definition of "institution of higher education" in section 481 of the Act resulting from the 1992 Amendments.

Changes: None.

Section 682.210(b)(1)(v)

Comment: Some commenters suggested that the Secretary define "United States" for purposes of the unemployment deferment so that lenders clearly understand which geographic areas are included.

Discussion: The Secretary believes it is unnecessary to define this term in the regulations. For purposes of this deferment, the Secretary clarifies that, consistent with the definition of State in 34 CFR 668.2, the United States includes borrowers residing in and seeking employment in any State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Additionally, a U.S. military base or U.S. embassy compound in a foreign country is considered as "in the United States" for purposes of this deferment. A borrower who resides on a U.S. military base or U.S. embassy compound in a foreign country because his or her spouse is stationed there, and who is seeking employment, would be required to provide documentation roughly equivalent to that required in Section 682.210(h)(1)(i). The "name of the firm" could be the "U.S. Military Base employment office" or "U.S. Embassy Personnel Office." The Secretary does not require those borrowers to comply with the requirement that they make six attempts to secure employment during the period of certification.

Changes: None.

Section 682.210(b)(4)

Comment: Some commenters suggested deleting the language referring to a borrower's attendance at a school that is operated by an agency of the Federal Government. The commenters recommended this change because students in the service academies do not qualify for FFEL program loans and are, therefore, ineligible for student deferments based on half-time enrollment.

Discussion: The Secretary recognizes that a condition of receiving a student deferment for half-time enrollment is that the borrower simultaneously be receiving a FFEL program loan. Since students attending the service academies, (and other federally-operated schools that do not participate in the FFEL programs) may not receive loans because these schools do not participate in the FFEL programs, they cannot qualify for this deferment.

Changes: The regulations have been revised. The language referencing schools operated by an agency of the Federal government has been deleted.

Section 682.210(b)(5)(iv)

Comment: One commenter suggested revising the rules dealing with the working-mother deferment. The commenter believes the regulations go beyond the statutory language by limiting eligibility for the deferment to only those individuals who apply for the deferment within one year of entering or re-entering the work force.

Discussion: The Secretary disagrees with the commenter. The statute clearly states that the deferment is "* * *for mothers with pre-school age children who are just entering or re-entering the work force* * *" (Emphasis added.) See section 428(b)(1)(M)(xi) of the Act. The Secretary believes that it is appropriate to define "just entering or re-entering" as within one year of entering or re-entering the work force on a full-time basis.

Changes: The Secretary is not revising the rules dealing with the working-mother deferment. However, the regulations are being revised to reflect that full-time employment involves at least 30 hours of work a week and is expected to last at least three months. This standard is consistent with the standard used in regard to the unemployment deferment.

Section 682.210(c)(1)(ii)

Comment: Many commenters stated that the proposed language would require both the registrar's and financial aid officer's signatures for half-time student deferments. They suggested that this places an unreasonable administrative burden on the borrower, school, and lender.

Discussion: The Secretary notes that for a new borrower applying for a student deferment, two conditions must be met. The borrower must obtain documentation from an authorized official of the school certifying at least half-time enrollment and a statement, or other documentation, from the financial aid administrator, indicating that the borrower has received or will receive a Stafford or SLS loan for the same period of enrollment for which the deferment is requested. Nothing in the regulations precludes the financial aid

administrator, as an authorized official of the school, from certifying the student's half-time enrollment, based on information provided by the registrar. The borrower may provide other information, i.e., a copy of the certified loan application, promissory note, or notice-of-loan guarantee as evidence that the borrower has or will be receiving a loan for the same period.

Changes: The Secretary has revised Section 682.210(c)(1)(ii) to permit the borrower to provide other documentation evidencing that the borrower has received or will be receiving a Stafford or SLS loan for the same period for which the deferment is requested.

Comment: Several commenters suggested that the borrower be allowed to provide the necessary proof that he or she has obtained a new loan for the period covered by the student deferment.

Discussion: The Secretary agrees with the commenters that allowing the borrower who applies for a student deferment to provide proof that he or she has obtained a new loan for the same period would lessen the administrative burden. The Secretary believes that a copy of the lender's notice-of-loan-guarantee or a copy of the application containing the school's certification would be acceptable documentation that the borrower has received or will receive a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

Changes: The Secretary has revised the regulations, as noted earlier, to permit a borrower to document eligibility for a student deferment by submitting evidence that a loan has been received.

Section 682.210(c)(1)(iii)

Comment: One commenter recommended that the Department's current policy that deferment applications be prescribed by the guaranty agency be changed. The commenter asked that the Department prescribe the use of standard deferment forms. The commenter believes that the Department is in the best position to develop a standard format for all deferment forms and that standardization would ease the administrative burden on schools. The commenter also believes that the use of standard deferment forms prescribed by the Secretary would contribute to the goal of greater automation in the administration of the FFEL programs and to the development of the National Student Loan Data Base.

Discussion: The Secretary understands the commenter's preference for the standardization of various FFEL program documents, especially as they relate to the Department's move toward enhanced methods of electronic processing and the development of the National Student Loan Data Base. As a result of a change made in section 432(m)(2) of the Act by the 1992 Amendments, the Secretary is required to work with representatives of guaranty agencies, institutions of higher education, and lenders to develop and prescribe a common deferment reporting form.

Changes: Section 682.401(d)(3) of the regulations have been revised to specify that guaranty agencies must use common forms, including common deferment forms, approved by the Secretary.

Section 682.210(f)(2)

Comment: Some comments suggested that the Secretary clarify that pregnancy is not considered a disabling condition unless extraordinary circumstances are certified by the physician.

Discussion: The Secretary restates his prior guidance that "temporarily totally disabled" is defined in section 435(g) of the Act as referring to a borrower "* * * who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed 3 years." (Emphasis added.) Since the statute specifically uses the term "by reason of injury illness," this deferment does not include all medical conditions. A healthy pregnancy is neither an injury nor illness and does not satisfy the requirements for a deferment.

The Secretary recognizes that during pregnancy there may be a period of time during which the borrower is unable to continue to attend school. The Secretary encourages lenders and guaranty agencies to grant forbearance to borrowers in these circumstances.

Changes: None.

Section 682.210(h)(1)(i)

Comment: Several commenters recommended deleting the requirement that a borrower seeking an unemployment deferment provide the names or titles of the people contacted as part of the borrower's conscientious search for employment. The commenters believe this requirement is burdensome and of little or no benefit to the borrower.

Discussion: The Secretary strongly disagrees. The Secretary expects an unemployed borrower to make a truly conscientious effort to secure employment. The Secretary believes that this involves making personal contact, either by phone or in person, with key personnel of potential employers, not just submitting resumes or job applications to those employers. The Secretary believes that if a borrower is not required to provide this information there is no evidence that a contact was made. However, the Secretary has decided to amend the regulations to provide that a lender may also accept, as evidence of employer contacts, documentation the borrower has provided to meet the requirements of the Unemployment Insurance Service if the documentation shows the same number of contacts and contains the same information that the borrower would be required to provide under the Department's regulations.

Changes: The regulations have been revised to provide that a lender may accept alternative documentation of employer contacts made to meet the requirements of the Unemployment Insurance Service.

Comment: Several commenters recommended inserting "during the preceding six months, except in the case of the initial period of unemployment" after "conscientious search for full-time employment." They suggested that this change clarifies that the borrower is to identify employers whom they already have contacted as opposed to listing potential future contacts. The commenters believe this avoids requiring that the deferment always be back-dated.

Discussion: The Secretary agrees that the attempts to secure employment for a given certification period should reflect contacts already made rather than potential contacts.

Changes: The Secretary has revised the regulations to adopt the recommended language.

Section 682.210(h)(1)(iii)

Comment: Several commenters suggested that the Secretary define what is considered an "accessible" public or private employment agency because they did not believe it was reasonable to expect an unemployed borrower to travel to the nearest public or private employment agency regardless of the distance involved. Some commenters recommended using a 50-mile radius as a reasonable distance to expect an unemployed borrower to travel.

Discussion: The Secretary believes that it is reasonable to expect a borrower to make a good-faith effort to register with a public or private employment agency as part of his or her employment search. However, the Secretary agrees with the commenters that for an unemployed borrower this requirement is reasonable only if the borrower does not have to travel long distances to register with an agency. Further, the Secretary believes that employment opportunities listed by an agency a significant distance from the borrower's home may not be realistic prospects if getting to work sites involves significant travel.

Changes: The Secretary has revised the regulations to reflect that a borrower must register with such an agency if one is within a 50-mile radius of the borrower's permanent or latest temporary address.

Section 682.210(h)(3)

Comment: One commenter recommended that the Secretary reinstate language found in current regulations in this section that provides that an unemployment deferment is not justified if a borrower refuses to seek or accept employment "in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience." The commenter stated that this wording had been helpful in the administration of this provision. Other commenters supported the concept that an unemployed borrower should not be overly restrictive in his or her search for employment, but also felt that a borrower should be allowed to take certain professional considerations into account in that search. They believe that someone trained for, or who has been employed in, a specific professional area should be able to pursue employment in that career.

Discussion: The Secretary agrees that the language deleted from this provision in the NPRM is intended to establish a requirement that a borrower cannot refuse work based on certain preferences. The Secretary does not agree with those commenters who believe that an unemployed borrower should be allowed to take into account professional preferences in his or her job search. The Secretary believes that a borrower is responsible for repayment of a FFEL program loan and should not expect the Secretary to subsidize the borrower's search for the best professional opportunity. The Secretary understands that this may require a borrower to accept temporary or less desirable employment in order to make payments on the loan while continuing a long-term search for a better job opportunity.

Changes: The Secretary has revised the regulations to include the phrase deleted from the NPRM.

Section 682.210(i)

Comment: Numerous commenters recommended that borrowers attempting to qualify for a military deferment should be allowed to provide the lender with a copy of his or her official military orders in lieu of a "written" statement from the borrower's commanding or personnel officer.

Discussion: The Secretary agrees that a lender should be able to use information from the borrower's military orders to document that the borrower is eligible for a military deferment.

Changes: The Secretary has revised the regulations to allow a borrower to document eligibility for a military deferment by providing either a "written" statement from the commanding or personnel officer or a copy of his or her official military orders and official military identification.

Comment: Several commenters recommended that proposed Section 682.210(i)(3) be revised to provide that under certain circumstances military reservists serving on active duty for less than one year would be eligible for a military deferment. The commenters noted that many reservists that were called to active duty in Operation Desert Shield or Operation Desert Storm would not qualify for a military deferment based on the proposed regulations. The commenters recommended that the Secretary provide for flexibility in the regulations to address these types of situations.

Discussion: The Secretary agrees with the commenters that the regulations should be revised to give lenders the ability to react in a timely fashion to circumstances in which the normal one-year requirement for active duty might not be appropriate.

Changes: The language of Section 682.210(i)(3) has been revised to specify that a reservist called to active duty would be expected to serve on a full-time basis for at least one year unless an order for national mobilization of reservists is issued.

Section 682.210(m)

Comment: Some commenters objected to the limitation on the compensation rate for full-time volunteers serving with tax-exempt organizations to qualify for a deferment as proposed in Section 682.210(m)(1)(iii) of the regulations. The commenters stated that restricting the compensation rate to one that does not equal or exceed the Federal minimum wage was inconsistent with the statutory intent that these volunteers be treated as performing service comparable to service performed by volunteers in the Peace Corps and ACTION programs because volunteers in those programs are compensated at a rate consistent with the Federal minimum wage. Another commenter indicated that this restriction was in conflict with the President's active support of volunteerism. Still another commenter indicated that many individuals working for tax-exempt organizations would be ineligible for the deferment if the organizations' by-laws required that individuals serving with the organizations be paid the Federal minimum wage.

Discussion: Sections 427(a)(2)(C) and 428(b)(1)(M) of the Act were amended by the 1992 Amendments to reduce the different types of deferments available to FFEL borrowers. In particular, the new law provides new borrowers, whose first disbursement is made on or after July 1, 1993, with the following types of deferment: (1) Student deferment, (2) graduate fellowship deferment, (3) rehabilitation training program deferment, (4) unemployment deferment, and (5) economic hardship deferment. For purposes of these deferments, a new borrower is one who, on the date of application, has no outstanding balance of interest or principal on a Stafford, SLS, or PLUS loan or, in the case of a Consolidation loan applicant, has no outstanding balance on any other FFEL program loan obtained prior to July 1, 1993. The term economic hardship is defined in the statute as circumstances under which a borrower is working full-time and is earning an amount that does not exceed the greater of the minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 or an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act, or under other criteria identified by the Secretary in regulations. Because this definition provides for a compensation rate that is at least the Federal minimum wage and new borrowers serving as volunteers in tax-exempt organizations may be eligible for this deferment based on this criteria, the Secretary believes that the same standard of compensation should apply to borrowers subject to the previous deferment provisions.

Changes: The phrase "or equals" has been deleted from Section 682.210(m)(1)(iii).

Section 682.210(n)

Comment: One commenter suggested clarifying the definition of "internship or residency." The commenter indicated that these terms can refer to any profession and believe it is necessary to specify which professions satisfy the requirements for this deferment.

Discussion: The Secretary does not believe that it is necessary to define these terms. An internship or residency deferment may be provided to borrowers in any profession that meets the regulatory requirements.

Changes: None.

Section 682.210(o)(1)

Comment: A few commenters suggested revising the eligibility criteria for a parental-leave deferment so that a Stafford loan borrower may qualify for the deferment without being required to forego a portion of his or her grace period. A Stafford loan borrower does not enter repayment until his or her six-month grace period has elapsed. At that time, the borrower would not have been enrolled at an eligible institution during the preceding six months, as required for the deferment. The commenters believe that by relaxing this criterion the Department will ease the lender's task of securing a borrower's authorization to waive voluntarily a portion of his or her grace period so the deferment can be processed.

Discussion: Section 435(h)(3) of the Act clearly requires that to qualify for a parental-leave deferment the borrower has to be enrolled at least half-time at an eligible institution during the preceding six months. The Secretary cannot waive these statutory requirements. The Secretary previously has issued guidance to lenders indicating that they may advise a borrower that he or she voluntarily may waive a portion of the grace period to qualify for the deferment.

Changes: None.

Comment: Several commenters recommended that the phrase "or the borrower's spouse is pregnant * * *" be deleted from the eligibility criteria for the parental-leave deferment. The commenters stated that the pregnancy of a borrower's spouse did not appear to be covered by section 435(h) of the Act.

Discussion: The Secretary agrees with the commenters that the Act does not extend to cover the pregnancy of a borrower's spouse.

Changes: The phrase has been deleted from the regulations.

Comment: One commenter noted that in many adoption cases the child is placed in the home before the completion of the adoption process. The commenter recommended that the regulations be revised to ensure that a borrower on leave as part of a preadoption placement is eligible for the parental-leave deferment.

Discussion: The Secretary believes that a borrower who takes leave from employment in conjunction with the adoption process should be eligible for the parental-leave deferment regardless of whether the leave occurs before or immediately following the official adoption date.

Changes: The regulations have been revised to permit a borrower to qualify for the parental-leave deferment during the period the borrower cares for a child immediately following placement of the child with the borrower in connection with an adoption.

Section 682.210(r)(2)

Comment: Many commenters objected to the documentation required to support a borrower's eligibility for the working-mother deferment. They believe it represents a significant burden on the borrower and that the documents cannot be obtained easily. The commenters suggested that the borrower be allowed to self-certify the information necessary to qualify for the deferment.

Discussion: The Secretary notes that a borrower is required under Section 682.210 "to provide the lender with all information and documents required to establish eligibility for a specific type of deferment." The Secretary believes that allowing a borrower to self-certify eligibility for the working-mother deferment fails to meet this requirement. The Secretary considers that the documents the borrower is required to submit to support eligibility (e.g., a photocopy of child's birth certificate documenting the child's age and a pay stub or similar document showing her pay rate) represent minimal requirements and are obtained easily.

Changes: None.

Comment: One commenter suggested that the benefits of the working-mother deferment should be extended to single fathers who also meet the eligibility criteria for the deferment.

Discussion: The provisions of section 428(b)(1)(M)(xi) of the Act clearly restrict the working-mother deferment to mothers.

Changes: None.

Section 682.211 Forbearance

Section 682.211(a)(2)(i)

Comment: A few commenters recommended the deletion of the requirement that the lender document that the borrower intends to repay the loan as a condition for granting forbearance. The commenters believe this affirmation by the borrower serves no purpose. They believe it adds no further creditability to the information submitted by the borrower to support the forbearance.

Discussion: The Secretary believes that forbearance should be granted only to borrowers who are willing to repay their loans but temporarily are unable to make payments due to medical or other acceptable circumstances. The proposed additional documentation requirement forces the lender to ensure that the borrower states his or her intention to repay the loan as well as providing a record of the factors that support the lender's decision to grant the forbearance. The lender is being required simply to document the borrower's willingness to repay.

Changes: None.

Section 682.211(b), (c), and (d)

Comment: Many commenters opposed the proposal to treat a forbearance granted after default differently from other types of forbearance, i.e., a post-default forbearance would not extend the 10-year repayment period and the minimum annual repayment provisions would apply. The commenters indicated that this would require the lender to develop a separate tracking system for borrowers granted forbearance after default. Several other commenters questioned the need for specifying that a lender must grant a forbearance on terms that are "consistent with" or "inconsistent with" the 10-year repayment and the minimum annual repayment provisions and requested that the Secretary simplify the forbearance provisions. Still other commenters recommended that the Secretary specify that a lender does not have to sign a forbearance agreement with a borrower in offering the borrower a graduated repayment schedule that provides for payments that total less than the minimum annual payment amount. The commenters believe that requiring a signed forbearance agreement would discourage lenders from offering the graduated repayment option to borrowers.

Discussion: The Secretary agrees that developing and maintaining separate tracking systems for different types of forbearances would be administratively burdensome and complicate significantly the use of forbearance to assist a borrower in avoiding default. The Secretary also agrees that a lender should be able to offer a borrower a graduated repayment schedule that provides for payment of less than the minimum annual repayment amount without executing a forbearance agreement with the borrower.

Changes: The Secretary has deleted all reference to repayment terms that are consistent or inconsistent with the minimum annual payment requirement and the 10-year maximum repayment period in Sections 682.211(b), 682.211(c), and 682.211(d) of the regulations. Section 682.209(a)(6)(ii) of the regulations has also been revised to provide that a lender may offer a borrower a graduated repayment schedule without completing an agreement as specified in Section 682.209(c)(1)(ii).

Comment: Several commenters recommended that the regulations be revised specifically to provide that, upon notice to a borrower, a lender may grant forbearance in circumstances similar to the Operation Desert Shield or Operation Desert Storm action in which contact with a borrower might be impossible.

Discussion: The Secretary agrees that specific guidance should be incorporated into the regulations to ensure that lenders react in a timely manner to situations such as Operation Desert Shield or Operation Desert Storm in the future.

Changes: The regulations have been revised in Section 682.211(f) to provide that, upon notice to a borrower, forbearance may be granted by a lender in the event of a national military mobilization or other national emergency for a period authorized by the Secretary.

Section 682.211(f)

Comment: Several commenters recommended that a lender be allowed to grant forbearance for the period prior to the borrower filing a bankruptcy petition. The commenters noted that, without this change, lenders would only be able to approve forbearance from the date the borrower files the bankruptcy petition when the borrower might already be severely delinquent.

Discussion: The Secretary agrees that lenders should be provided with the option of offering forbearance to a borrower to cover this period. The Secretary believes this would assist in the handling of delinquencies for borrowers who, after a significant period of time, emerge from a stay of collections associated with the bankruptcy process and are again subject to collection.

Changes: A new provision has been added to Section 682.211(f) to permit a lender to grant a forbearance for a period prior to the borrower filing a bankruptcy petition.

Section 682.213 Prohibition Against the Use of the Rule of 78s

Comment: Some commenters recommended that this section be expanded to include guidance on loans previously approved using the Rule of 78s to calculate the outstanding principal balance of the loan.

Discussion: The Secretary continues to receive questions on this issue and agrees that the regulations should recognize loans on which the principal balance was previously calculated using the Rule of 78s.

Changes: The regulations have been revised to recognize that the Rule of 78s still might apply to loans that entered repayment before June 26, 1987 that had the principal balance calculated using the Rule of 78s. The Rule of 78s would be used for the life of the loan.

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Section 682.214 Compliance With Equal Credit Opportunity Requirements

Comment: A number of commenters recommended that this section be modified to include all the FFEL programs, rather than having it apply just to the Stafford Loan Program.

Discussion: The Secretary has been advised by the Federal Reserve Board that the regulations as currently written comply with Regulation B, 12 CFR part 202. The PLUS program does not meet any of the criteria of 12 CFR 202.8, and neither PLUS nor SLS meet the criteria of 12 CFR 202.8(d) of Regulation B.

Changes: None.

Section 682.215 Defenses to the Borrower's Obligation To Repay a GSL Loan

Comment: Many commenters indicated that they believed that lenders must have a clearly protected right to repayment by borrowers even if the borrower's school violates its obligations to its students. The commenters recommended that the regulations be modified to state that lenders would be subject to a borrower's defense against repayment of a loan based on school misconduct only if a written origination contract existed between the school and lender, or the school, with the consent of the lender, completes the lender's section of the loan application on behalf of the lender. These same commenters supported the proposed use of a disclaimer to inform borrowers that lenders are generally not responsible for school misconduct. They recommended that the definition of "origination" in 34 CFR 682.200 be modified to delete reference to a "special" relationship and the examples provided in the definition because the regulations would specify the circumstances under which a defense would apply. Several other commenters recommended defining what does not constitute an "origination relationship" rather than what does. Many other commenters stated that they agreed that the quality of a school's performance and the employability of its graduates should not provide a borrower with a defense to repayment of a loan. However, these commenters indicated that the proposed regulations still held borrowers financially responsible for most cases of school fraud and recommended that the Secretary take direct responsibility in the final regulations for borrowers harmed by school fraud or school closings. Several commenters indicated that they believed that the regulations provided insufficient protection to borrowers from a school's failure to comply with Title IV refund requirements. Two other commenters strongly objected to the proposed section, saying that it did not provide adequate consumer protection for borrowers and recommended deletion of the section. The commenters stated that the use of the disclaimer notice by the lender made it virtually impossible for a borrower to ever raise such a defense and thereby rendered the borrower's rights illusory.

Discussion: After considering the comments on this proposed section and the Department's experience in this area, the Secretary has decided that it is not desirable at this time to prescribe in regulations a uniform Federal rule regarding borrower defenses that would preempt State law otherwise applicable to the FFEL programs. The Department believes that the determination of whether a defense under State law is available to a borrower requires a case-by-case assessment of whether individual State laws would frustrate accomplishment of the Federal objectives of the FFEL program. The Department, as a result of its litigation experience, has identified four kinds of State laws whose application would not frustrate FFEL program policies and are therefore not preempted by Federal law. These are State laws that would make a lender subject to school-related defenses against the repayment of the loan if: (1) The lender has notice (actual or imputed) of substantial prior unresolved complaints about the school prior to making the loan; (2) the lender has delegated substantial loan making functions to the school (an "origination relationship"); (3) the lender and the school are corporate affiliates or are otherwise commonly controlled; and (4) the lender paid a finder's fee or referral fee to the school with regard to the loan. Consistent with this approach, the term "origination" in proposed Section 682.200 has been revised to be "origination relationship." The Secretary has also decided to describe an "origination relationship" as a special business relationship between a school and a lender so as to distinguish it from the relationship that exists between these parties as part of the normal loan processing and delivery system. In addition, the Secretary notes that the 1992 Amendments have amended the Act to provide for the discharge of loans for a student who received a loan on or after January 1, 1986 and who was unable to complete a program of study in which he or she was enrolled due to the school's closure or if the student's eligibility for a loan was falsely certified by the school. These provisions will be reflected in future regulations developed as a result of the 1992 Amendments.

Changes: The Secretary has deleted the provisions of Section 682.215. The term "origination" in proposed Section 682.200 has been revised to "origination relationship." Further, the regulations have been revised to describe an "origination relationship" as a special business relationship.

Section 682.300 Payment of Interest Benefits on Stafford Loans

Section 682.300(b)(2)

Comment: Several commenters suggested that the Secretary modify the proposed regulatory provision requiring interest on loan proceeds transferred electronically to cease on the 120th day if the school has not released the funds from the school's restricted account. The commenters argued that the lender would have no way of knowing if funds are released and might incur a violation based on an event controlled by the school and not by the lender. The commenters suggested defining the date that interest benefits cease as the date funds are returned to the lender. Other commenters suggested that processing time is needed after loan proceeds are returned to the lender and recommended that 10 business days be provided for that purpose.

Discussion: The Secretary believes that 120 days is sufficient time for a school to return funds from its restricted account to the lender and for the lender to complete any required processing. Lenders must have a system in place to monitor the release of loan proceeds to ensure that funds are not delivered after 120 days.

Changes: None.

Comment: One commenter stated that Section 682.300(b)(2)(iii) and Section 682.300(b)(2)(iv) are confusing. The commenter indicated that the event causing the claim to be filed, i.e., default, always would be earlier than the date

the lender receives payment on a claim for loss on the loan. Thus, the Secretary's obligation to pay interest benefits always would cease on the date of default.

Discussion: There are special conditions, such as school closings, in which default claims must be filed with the guaranty agency. In these cases, the loan is in default only for the purpose of allowing the lender to receive an insurance payment. The borrower is not considered to be in default as defined in section 435(1) of the Act, and a lender may not report to any credit bureau or other third party that the borrower is in default on the loan.

Changes: None.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

Comment: One commenter suggested that the Secretary clarify that it is the school's responsibility to determine whether a borrower is a member of a religious order and, if so, to notify the lender that the borrower is ineligible to receive interest benefits. Another commenter asked whether this determination would have to be made for every applicant that indicates a religious affiliation on a school application or other form.

Discussion: The Secretary wishes to clarify that these regulatory provisions are intended to mirror similar provisions that have existed in other Title IV programs for a number of years. See Sections 673.22(a)(5), 674.9(c), 675.9(c) and 676.9(c). They are not intended to apply to every applicant that responds to a question on religious affiliation. In determining an applicant's eligibility for interest benefits, if the school has received information indicating that the applicant is a member of a religious order, group, community, society, agency, or other similar organization, it is required to document whether the conditions detailed in Section 682.301(a)(2) apply to the applicant. In the Secretary's view, service in such an order generally reflects that the individual is supported fully by the order and does not have financial need for FFEL purposes. A school is not expected to make a determination unless it has reason to know that an applicant is a member of such an order and meets the criteria specified in Section 682.301(a)(2). The school must document its determination and place it in the student's file.

Changes: None.

Section 682.301(b)

Comment: One commenter argued that Section 682.301(b) seems to require the student to submit the loan application directly to the lender and, therefore, unduly restricts the use of automated application processing. The commenter urged the Secretary to clarify that a school may submit a loan application directly to the lender at the borrower's request.

Discussion: The Secretary did not intend in Section 682.301(b) to require a borrower to submit a loan application directly to a lender.

Changes: A change has been made. The Secretary has modified Section 682.301(b) to clearly state that a school may transmit a loan application to an eligible lender at the direction of the borrower.

Section 682.301(c)

Comment: One commenter suggested that Section 682.301(c), concerning use of loan proceeds to replace EFC, should also clearly indicate that borrowers may use aid from private and State-sponsored programs.

Discussion: The Secretary agrees with the commenter. Section 428(a)(2)(E) of the Act provides for the EFC to be offset by loans made under the SLS, PLUS, State-sponsored, or private loan programs.

Changes: A change has been made. The Secretary has revised Section 682.301(c) to reflect the requirements of section 428(a)(2)(E) of the Act. In addition, the Secretary is codifying current policy that allows the use of a nonsubsidized Stafford loan to replace the student's EFC.

Section 682.302 Payment of Special Allowance on FFEL Loans

Section 682.302(d)

Comment: Many commenters opposed the Secretary's proposal to terminate a lender's eligibility for special allowance payments 45 days after the borrower's default on the loan unless the lender had filed a default claim with the guaranty agency by the 45th day. The commenters felt that 45 days would not provide sufficient time for a lender to compile all the required documents for a default claim, particularly given the new requirement that a payment and collection history be part of the default claim filed with the guaranty agency. The commenters felt that the current 90-day standard with full interest and special allowance benefits should be retained.

Discussion: The Secretary notes that a lender may continue to file a default claim with the guaranty agency within 90 days of default under the provisions of Section 682.406(a)(5). The Secretary intended, through this proposal, to restrict the payment of special allowance to the lender to 45 days after the borrower's default on the loan if the lender did not submit the default claim to the guaranty agency by the 45th day. However, the Secretary agrees with the commenters that the 45-day deadline for submission of a default claim package for the lender to retain special allowance after the 45th day may not provide sufficient time to prepare and submit a default claim package in light of the new documentation requirements for claim submissions. Therefore, the Secretary has decided to change the 45-day deadline to a 60-day deadline. The regulations will now restrict the payment of special allowance to the lender to 60 days after the borrower's default on the loan if the lender does not submit the default claim package to the guaranty agency by the 60th day. Additionally, to provide lenders with extra time to adjust to this provision, the Secretary has decided to delay the effective date of the provision. The provision will become effective for loans for which the first day of delinquency is on or after 120 days following the date of publication of the regulations.

Changes: The Secretary has amended the regulations to allow a lender to maintain eligibility for special allowance payments if the lender submits a claim to the guaranty agency within 60 days of the date of default.

Comment: Several commenters disagreed with the Secretary's proposal to terminate special allowance on the

date the guaranty agency returns a claim to a lender for additional documentation. These commenters felt that eligibility for special allowance should continue until the claim is paid.

Discussion: The Secretary agrees with the commenters and has decided to revise the regulations so as not to penalize a lender by terminating special allowance on an otherwise eligible loan if it is returned by the guaranty agency due to inadequate documentation. If the loan had not been submitted by the lender by the 60th day after default, it already would have lost eligibility for special allowance and being returned because of inadequate documentation would not re-establish eligibility for special allowance. If a loan is rejected by the guaranty agency because of a due diligence or timely filing violation, eligibility for special allowance already would have been lost as of the date of the violation.

Changes: The regulations have been revised to reflect that an otherwise eligible loan may continue to receive special allowance if it is resubmitted by the 30th day after the loan was returned to the lender by the guaranty agency solely because of inadequate documentation. If the loan is submitted after the 30th day, but by the 60th day, the loan is reinsured but special allowance is limited to the 30th day after the loan is returned by the guaranty agency due solely to inadequate documentation. If an otherwise eligible loan is not resubmitted by the 60th day after being returned to the lender by the guaranty agency, the timely filing violation must be cured by the lender using the procedures in Bulletin 88-G-138 (appendix D).

Comment: One commenter stated that the provisions of Section 682.302(d)(vii) conflicted with Section 682.406(a)(7). These two sections reflect that special allowance terminates on returned claims at a different time than the period during which interest is paid.

Discussion: The Secretary disagrees with the commenter. Section 682.302(d)(vii) specifies one of the conditions under which special allowance payments will terminate. Section 682.406(a)(7) outlines the conditions of reinsurance coverage and specifies the maximum length of time the Secretary will pay interest on a reinsured claim.

Changes: None.

Section 682.304 Methods for Computing Interest Benefits and Special Allowance

Section 682.304(b)

Comment: One commenter noted that Section 682.304(b)(2) is inconsistent with Section 682.304(c). The commenter suggested that the 365.25-day calculation method should be used in the average daily balance method as well as in the actual accrual method.

Discussion: Section 682.304(b)(2) prescribes the calculation method that the Secretary will use to determine the average daily balance for interest benefits unless the lender chooses to use the actual accrual method. A lender chooses the average daily balance method by not completing ED Form 799, part III, Column E, entitled "Interest benefits." Completion of this part of the form is optional. If the lender chooses to complete the interest section, it may use the 365.25-day calculation method. If the lender chooses not to complete the interest section, the Secretary will use the calculation method prescribed in 34 CFR Section 682.304(b)(2) to compute interest benefits.

Changes: None.

Section 682.304(d)

Comment: One commenter suggested that the Secretary should clarify that the calculation in Section 682.304(d)(1) represents the average daily balance for the quarter for qualifying loans at each applicable interest rate.

Discussion: The Secretary agrees with the commenter's suggestion.

Changes: A change has been made. Section 682.304(d)(1) has been revised to clarify that the average daily balance calculation for the quarter represents qualifying loans at each applicable interest rate.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Section 682.305(a)(4)(ii)

Comment: Many commenters were opposed to the Secretary's proposal to make the buyer and the seller jointly and severally liable for payment of origination fees. The commenters argued that the buyer paid the seller for outstanding origination fees at the time of the sale and that the buyer should be liable only if the loans were bought in the same quarter in which they were originated.

Discussion: The proposed regulations codify the Secretary's long-standing view that if a loan is assigned the assignee and assignor have equal responsibility to ensure that origination fees are paid to the Secretary. Bulletin 91-L-142, dated October 1991, reiterated this requirement, reminding chief executive officers of entities that make, sell, and buy Stafford loans that origination fees should be paid in a timely manner. For operational purposes, the regulations allow either the buyer or the seller to report the amount of the origination fee to the Secretary if the loan is originated and sold within the same quarter. It is assumed that if a loan is sold in a quarter after the one in which it was originated, the originating lender would already have reported the amount of the origination fee to the Secretary.

Changes: The Secretary has modified Section 682.406(a)(12) to specify that the payment of origination fees is a condition of reinsurance. However, the Secretary will apply this sanction only if the purchasing lender refuses to pay outstanding origination fees on loans it has purchased.

Section 682.305(b)(1)(ii)

Comment: Several commenters argued that Section 682.305(b)(1)(ii) should be revised to clarify that, for penalty interest purposes, the payment of interest benefits begins on the date on which payment actually is made by the Treasury Department rather than the date on which the Secretary authorizes the Treasury Department to pay the lender.

Discussion: Section 682.305(b)(1)(ii) is based on section 438(b)(4) of the Act, which provides that the calculation of the time period ends on the date the Secretary authorizes payment.

Changes: None.

Comment: Several commenters argued that penalty interest should not be limited to the special allowance rate applicable to loans made on or after November 16, 1986, i.e., Treasury bills plus 3.25 percent. The commenters suggested that the Secretary reimburse the lender for the actual special allowance factor as authorized by the Act.

Discussion: The Secretary agrees that the penalty interest calculation should be based on the actual interest and special allowance rates. He also believes that it is necessary to clarify how reductions to interest and special allowance payments (e.g., reductions for origination fees or other debts owed to the Federal government) will be accommodated in penalty interest calculations.

Changes: The Secretary has modified the regulations to base penalty interest calculations on actual interest and special allowance rates.

Section 682.305(b)(6)(iv)

Comment: A few commenters suggested that the Secretary include the phrase "unless the Secretary authorizes an exception in writing" at the end of Section 682.305(b)(6)(iv).

Discussion: Proposed Section 682.305(b)(6), which is now Section 682.306(b)(5), specifically identifies the circumstances in which the Secretary considers a request from a lender for payment of interest and special allowance to be inaccurate and incomplete. The Secretary does not anticipate permitting any exceptions to these requirements.

Changes: None.

Section 682.305(c)

Comment: Many commenters objected to the Secretary requiring an independent audit of a lender's loan portfolio if the lender originates in excess of, or its loan volume exceeds, $10 million. The commenters stated that large lenders are audited extensively by their own auditors, guaranty agencies, and the Federal government, and this requirement only would produce unnecessary financial expense and burden for lenders. Other commenters stated that an audit every two or three years is sufficient. Several commenters objected to the proposed requirement that the audit report be submitted within 90 days of the end of the Federal fiscal year. The commenters did not believe that this was sufficient time to conduct an audit of this scope and complete and submit the required audit report to the Secretary.

Discussion: The 1992 Amendments require that each lender participating in the FFEL programs have an annual independent compliance audit conducted by a qualified independent organization or person. The regulations have been changed to reflect this new requirement. In addition, the Secretary agrees with the commenters that 90 days after the end of the Federal fiscal year may not be sufficient for conducting the audit and completing and submitting the audit report. The Secretary has decided to require that the audit report be submitted within six months following the end of the audit period. However, the Secretary will monitor the implementation of this requirement closely to determine if this period can be reduced in the future.

Changes: A change has been made. The Secretary has revised Section 682.305(c) to require all lenders to conduct an annual compliance audit by a qualified independent organization or person. The audit must be submitted to the Secretary within six months following the end of the audit period. The Secretary also is requiring that the first audit cover the lender's first fiscal year that begins after July 23, 1992.

Comment: A number of commenters opposed the requirement that the independent financial and compliance audit period be based on the Federal fiscal year.

Discussion: The Secretary understands that this requirement would represent a significant administrative burden for lenders that do not use the Federal fiscal year and are required to conduct audits to comply with other Federal or State requirements. To prevent having to conduct more than one audit, the lender would be required to conduct one audit to cover all program operations occurring within the three months overlapping separate audit periods.

Changes: The Secretary has revised the regulations to allow lenders to use an alternative audit period to the Federal fiscal year to conduct the annual compliance audit.

Comment: A few commenters noted that nonprofit and State government lenders are subject to the provisions of Office of Management and Budget (OMB) Circular No. A-133 that provides that a single audit of the entity's participation in all Federal programs satisfies the audit requirement of all of those programs. The commenters suggested that nonprofit and State lenders be exempt from the proposed audit requirement in Section 682.305(c).

Discussion: The Secretary agrees with the commenters. An additional independent audit of nonprofit and State government lenders' administration of the FFEL programs would create an additional financial burden if the lenders are subject to the single Federal audit requirement.

Changes: A change has been made. The Secretary has revised 34 CFR 682.305(c)(2) to exempt nonprofit and State government lenders from the audit requirement if an audit, in accordance with 31 U.S.C. 7502 and OMB Circular A-133, has been conducted.

Section 682.401 Basic Program Agreement

Section 682.401(b)(4)

Comment: Many commenters opposed the proposed requirement that borrowers notify the school of any change in employer or employer's address. The commenters indicated that borrowers are unlikely to report this information to their schools and that although this information is useful to lenders if a borrower becomes delinquent, it is not useful to schools. The commenters recommended that the requirement be deleted or modified to require that borrowers notify lenders of those changes. Other commenters recommended that the borrower be required to notify the current holder of the loan of these changes rather than the lender; this was based on the likelihood that the loan would be sold.

Discussion: The Secretary agrees that it is unusual for a school to know when a borrower changes employers and that the information should be reported to the lender to assist the lender in collecting the loan if the borrower becomes

delinquent. The Secretary also agrees that changes of student status or employer should be reported to the current holder of the loan to ensure that the information is provided to the party to which it will prove most useful. The Secretary believes that Congress also contemplated that this information would be most useful to the lender when it required in section 485(b) of the Act that information collected from the borrower during the exit interview regarding the borrower's expected future employment be forwarded to the holder of the borrower's loan.

Changes: The Secretary has amended the regulations to require a borrower to notify the current holder of any change of name, address, student status to less than half-time, employer, or employer's address.

Section 682.401(b)(8)

Comment: Some commenters requested that the Secretary clarify whether any service or fee restrictions can be imposed on students (or parents borrowing on behalf of those students) who are not residents of the State served by a guaranty agency but who are attending school in that State. The commenters questioned whether a variable fee structure for out-of-state borrowers would be prohibited by this provision.

Discussion: A guaranty agency is prohibited from imposing any additional restrictions on out-of-state students who are attending a school in a State served by the guaranty agency. A fee structure that discriminates against out-of-state borrowers attending an in-state school would violate the non-discrimination provisions in section 428(b)(1)(S) of the Act. However, a variable fee structure imposed by the agency on both in-state and out-of-state students would not be considered such a restriction.

Changes: None.

Section 682.401(b)(9)

Comment: One commenter suggested deleting the phrase "excluding interest or other charges the lender may have added to the principal balance" from Section 682.401(b)(9)(iv), which describes how much the guaranty agency may charge as an insurance premium.

Discussion: Because the insurance premium is deducted from the proceeds of a loan when it is made, it is not possible for interest or other charges to have been added to the loan before the insurance premium is deducted.

Changes: The regulations have been revised to remove the phrase regarding interest and other charges from the description of how much a guaranty agency can charge for an insurance premium.

Comment: A number of commenters objected to requirements in Section 682.401(b)(9) and Section 682.406(a)(1) that, if funds are disbursed by means of electronic funds transfer and the funds are not released within 120 days from the school's restricted account, the insurance premium must be refunded and the loan loses reinsurance. The commenters stated that a lender would have no way of knowing if or when the funds were released from the restricted account.

Discussion: If loan proceeds are disbursed by means of electronic funds transfer, the lender must have a system in place to determine that the funds were released from the school's restricted account within 120 days of disbursement. The system developed to monitor and document that the funds have been released is a matter between the lender and the school. If these funds are released after the 120th day, the loan loses reinsurance, and the origination fee and any insurance premium assessed against the borrower must be refunded.

Changes: None.

Section 682.401(b)(12)

Comment: Some commenters asked the Secretary to clarify that if a guaranty agency charges its lenders a fee to refinance fixed-rate PLUS and SLS loans, the agency must not charge different fees to different lenders. Other commenters asked how this fee may be assessed, i.e., is it to be a flat dollar fee or may a percentage of the refinanced amount be used?

Discussion: Guaranty agencies are permitted to charge lenders a fee for refinancing fixed-rate PLUS and SLS loans. See Section 682.401(b)(12). If an agency charges a fee, it must charge that fee consistently to all lenders who refinance fixed-rate PLUS and SLS loans. A guaranty agency may not discriminate against participating lenders. See section 428(b)(1)(u) of the Act. This fee may be either a flat dollar amount or a percentage of the fee charged to the borrower.

Changes: The regulations have been amended to clarify that if an agency charges a fee, it must charge that fee to all lenders.

Section 682.401(b)(18)

Comment: Some commenters questioned what lenders and guaranty agencies would be permitted to do with information learned through a student status confirmation report. Other commenters questioned what procedures should be followed if information on a student status confirmation report conflicts with information held by the lender or guaranty agency.

Discussion: A holder of a FFEL program loan is required to act on any information received from the student status confirmation report. As noted in Section III of Dear Guaranty Agency Director Letter 88-G-138, "A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has."

Changes: None.

Comment: A number of commenters suggested that rather than requiring guaranty agencies to use the report format specified in appendix B for the student status confirmation report, the Secretary should specify only the data elements that must be included and let the format be developed by guaranty agencies and other program participants. Many commenters wholeheartedly supported the establishment of a uniform system for monitoring student enrollment status.

Discussion: In the "Comments and Responses" to the final FFEL regulations published on November 10, 1986, the Secretary noted his concern "with the administrative burden that might be imposed on schools if each agency adopts a different monitoring system." See 51 FR 40941. No uniform system for monitoring student-enrollment status has been established voluntarily in the intervening years. Therefore, the Secretary, in response to continuing requests from schools to establish such a system, is mandating that guaranty agencies use the form specified in appendix B of these regulations, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

Changes: The regulations have been revised to require the guaranty agency to use appendix B, unless notified by the Secretary that other data elements or a revised format may be used. The Secretary has also revised appendix B to provide definitions that apply to the data elements.

Section 682.401(d)(1)

Comment: Many commenters asked the Secretary to include a provision in the regulations that requires the school or a Multiple Data Entry (MDE) service to provide, without cost, the items on the common financial aid form that could not be included in the loan application.

Discussion: The Secretary does not believe a regulatory change is necessary and will ensure that a guaranty agency has access without cost to the data that is needed by the guaranty agency but that may not be included on the loan application.

Changes: None.

Section 682.401(e)

Comment: A number of commenters asked that Dear Colleague Letter 89-G-157, which dealt with inducements by lenders and guaranty agencies, be incorporated into the regulations.

Discussion: Dear Colleague Letter 89-G-157, issued in February 1989, described a number of scenarios that the Secretary would consider improper inducements and a number of scenarios that he would not consider to be inducements. Nothing in these regulations invalidates that guidance. The Secretary declines, however, to incorporate the contents of the letter into the regulations.

Changes: None.

Section 682.402 Death, Disability and Bankruptcy Payments

Section 682.402(a)(3)

Comment: Many commenters suggested that the Secretary should reinsure a death, disability, or bankruptcy claim even if the loan would not qualify for payment as a default claim. They suggested the lender's activity or inactivity has no relation to the borrower's present condition.

Discussion: The Secretary agrees that the lender's actions had no bearing on the condition that would otherwise qualify the borrower for cancellation. The same cannot be said about the effect of the lender's failure to service the loan properly on the repayment status of the loan before the cancellation. Therefore, the Secretary continues to believe that a claim that is not otherwise eligible for a default claim before cancellation should not be paid simply as a result of an unrelated condition of the borrower.

Changes: None.

Section 682.402(b)(3)

Comment: Several commenters requested that the Secretary increase the period for suspension of collection activities pending receipt of documentation verifying a borrower's death to 60 days from the proposed 30 days. They argued that the proposed rule provided lenders with insufficient time to secure the required documentation and placed them in the position of having to resume collection activities with the borrower's bereaved family.

Discussion: The Secretary understands the commenters' reluctance to resume collection activities under these circumstances. However, the Secretary believes that 30 days is a sufficient period to secure documentation of a borrower's death in light of the fact that, in addition to a death certificate, a lender may accept "other proof of death that is acceptable under applicable State law" or, if that is not available, "other evidence" that the guaranty agency believes establishes that the borrower has died. The Secretary believes that in many States the borrower's obituary notice is sufficient to document the borrower's death. "Other evidence" may also include, but is not limited to, a published account of a borrower's death in a newspaper or other published report or a letter from a member of the clergy or funeral home director in a position to verify the death.

Changes: None.

Section 682.402(d)(2)

Comment: Several commenters requested that the Secretary revise Section 682.402(d)(2) to provide that if a lender receives notification of a borrower's bankruptcy filing in the form of a written notice from the borrower's attorney, the notice must specify the name and address of the court in which the bankruptcy petition was filed and the case number. The commenters believe this additional information is necessary because written notices sometimes reflect a borrower's intention to file rather than an actual filing.

Discussion: The Secretary understands that written notices can sometimes be misleading. However, he believes that being overly prescriptive in detailing the contents of the written notice will result in a lack of lender response to notices that do not contain exactly the information prescribed in the regulations. The Secretary expects the lender to follow up with the attorney or the borrower if it receives a written notice that does not include all the information necessary to conclude that a bankruptcy petition has been filed.

Changes: None.

Section 682.402(d)(4)

Comment: A number of commenters noted that there was no mention in the regulations as to what procedures a lender should follow if it receives notice that a bankruptcy court has converted a "no asset" case to an "asset" case. The commenters suggested that the lender should be required to

file a proof of claim with the bankruptcy court within 30 days after receiving such a notice from the court.

Discussion: The Secretary agrees with the commenters. It is not uncommon for a bankruptcy court to decide that the borrower does have assets even though the original bankruptcy petition stated that no assets were available.

Changes: The Secretary has added a provision to the regulation to require a lender to file a proof of claim with the bankruptcy court within 30 days after receiving notice that a "no asset" case has been converted to an "asset" case.

Section 682.402(d)(5)

Comment: Several commenters requested that the Secretary clarify that, in the case of a Consolidation loan, the seven-year period in which a Title IV student loan cannot be discharged in bankruptcy begins when the Consolidation loan enters repayment rather than when the loans that were consolidated entered repayment.

Discussion: Section 682.402(d)(5) of the regulations, which addresses the circumstances under which a lender must file a bankruptcy claim with the guaranty agency, specifies that "the loan has been in repayment for more than seven years * * * from the due date of the first payment until the date of the filing of the petition for relief * * *." The Secretary notes that "the loan" as used in the regulations includes a Consolidation loan and that the seven-year period of nondischargeability commences from the due date of the first payment on the Consolidation loan rather than from the due date of the first payment on the underlying loans paid off by the Consolidation loan.

Changes: None.

Comment: A number of commenters felt the language in the regulations requiring a lender to file a bankruptcy claim if the borrower "has begun an action" to have the loan discharged was unnecessarily vague. The commenters believed that the language concerning the lender learning of a bankruptcy action should refer to the lender receiving a "summons and complaint" to determine dischargeability based on undue hardship.

Discussion: The term "summons and complaint" is the correct technical term for what the lender should receive if the dischargeability of a loan is going to be addressed to a bankruptcy court. However, the Secretary also recognizes that a lender might learn of a bankruptcy petition or action filed by the borrower through other means. The general language of the regulations requires the lender to take action to protect the loan from being discharged on the basis of information that might not necessarily come as a formal "summons and complaint" from the bankruptcy court.

Changes: None.

Section 682.402(d)(5)(ii)

Comment: Several commenters requested that the regulations be revised to allow a lender, after a bankruptcy proceeding has been completed or dismissed, to treat the loan as having been in forbearance from the date of the borrower's delinquency preceding the filing of the bankruptcy petition rather than from the date of the borrower's filing of the petition as proposed. The commenters believe that this will improve the lender's chances of averting a default by a borrower who might have been severely delinquent prior to filing a bankruptcy petition and who will continue to have difficulty making payments on a FFEL loan after the stay on collections is lifted.

Discussion: The Secretary understands the commenter's concerns and agrees that lenders should have greater flexibility in assisting borrowers in these circumstances to avoid default. However, the Secretary has decided to provide for this treatment by revising Section 682.211 of the regulations rather than making a change to Section 682.402.

Changes: None.

Section 682.402(e)(2)(ii)

Comments: Several commenters recommended revisions to the filing deadlines for a lender to file a bankruptcy claim with the guaranty agency. One commenter stated that the deadline for submission of a bankruptcy claim should never be less than 30 days and recommended that the Secretary allow a guaranty agency to provide a longer filing period if it believes this will not in any way hamper its ability to oppose the discharge of the loan. The commenter indicated that he knew of no instance where a 30-day period prevented an agency from opposing a discharge. Other commenters objected to the 10 (calendar) day standard included in Section 682.402(e)(2)(ii)(C) because they believe this is an insufficient period for claim filing. These commenters recommended that the provision be revised to 10 business days or 15 days.

Discussion: The Secretary believes that bankruptcy claims must be handled as expeditiously as possible to provide guaranty agencies with sufficient time to successfully oppose the discharge of the loan. The Secretary does not agree that 30 days is always sufficient time. The Secretary also believes that, given the increased number of bankruptcy filings nationwide, standard filing deadlines are important. Therefore, the Secretary declines to allow a guaranty agency to establish its own filing deadlines. The Secretary agrees that 10 calendar days might be insufficient time for claim filing if it includes a holiday period. Therefore, the regulations have been revised to provide 15 days.

Changes: Section 682.402(e)(2)(ii)(B) has been revised to provide the lender with 15 days to file a claim with the guaranty agency after the lender is served with a complaint or motion to have a loan determined to be dischargeable on the grounds of undue hardship.

Section 682.402(h)(5)

Comment: Several commenters objected to the proposed requirement that a lender repurchase a loan if a judgment is entered that the loan is non-dischargeable in bankruptcy or a discharge is denied to the borrower on any ground. The commenters stated that it is possible that the lender required to repurchase the claim might no longer participate in the FFEL program and that these repurchases will result in borrower confusion. They also stated that a borrower who has filed a bankruptcy petition is unlikely to be able to repay the loan and is likely to default on the loan. Therefore, they recommended that the borrower be required

to make payments to the guaranty agency sufficient for the borrower to rehabilitate the loan.

Discussion: The Secretary believes that a loan subject to repurchase under these provisions should be handled like all other loans subject to pre-default collection and that the lender is the party best equipped to deal with these loans. If the guaranty agency should find that a lender that would be expected to repurchase a loan has withdrawn from the program, the Secretary would expect the agency to arrange a repurchase by another eligible lender in its program. The Secretary also believes, contrary to the commenter's view, that a borrower who has filed a bankruptcy petition and has discharged other debts might be in a better position to repay his or her FFEL loan than prior to the bankruptcy filing. Finally, the Secretary is requiring the repurchase of loans that were not in default at the time the bankruptcy petition was filed. Loans that were in default prior to the borrower's filing of the bankruptcy petition would remain with the guaranty agency and loan rehabilitation and repurchase would be an option available to the borrower.

Changes: None.

Section 682.402(i)

Comment: Many commenters strongly supported the proposed change in the treatment of chapter 13 bankruptcy claims that provides that the Secretary would reimburse the guaranty agency for its losses after it pays those claims to lenders. Several commenters requested that the Secretary clarify that this treatment would apply to chapter 13 bankruptcy claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agency.

Discussion: The Secretary agrees that it is necessary to clarify that the provisions contained in Section 682.402(i) apply to chapter 13 claims paid to lenders prior to the date these regulations become effective and held currently by the guaranty agencies, in addition to any claims paid subsequent to the date the regulations become effective. However, the Secretary does not believe a revision to the regulations is necessary.

Changes: None.

Section 682.404 Federal Reinsurance Agreement

Section 682.404(a)(2)

Comment: Some commenters objected to the definition of preclaims assistance as at least three collection activities by the guaranty agency. If preclaims assistance is available only at the 90th day of delinquency, the commenters believe that there will not be enough time for the agency to comply with the statutory requirement that supplemental preclaims assistance be performed.

Discussion: While there is a requirement that supplemental preclaims assistance be performed on or after the 120th day of delinquency, there is no similar requirement regarding the timing of preclaims assistance. If a guaranty agency offering preclaims assistance only at the 90th day of delinquency feels that it is incapable of performing three collection activities in 30 days before beginning supplemental preclaims assistance at day 120, it should consider making preclaims assistance available to its lenders earlier (e.g., at the 60th day of delinquency).

Changes: None.

Section 682.404(g)(2)

Comment: A number of commenters stated that the Secretary's equitable share of payments received on defaulted loans should not apply to collection costs guaranty agencies charge on those loans. These commenters believe that section 428(c)(2)(D) of the Act limits the Secretary's equitable share only to payments made to reduce outstanding principal and interest owed by the borrower. The commenters also believe that since the Secretary does not provide reinsurance for collection costs it is inappropriate to deduct the Secretary's equitable share from these costs.

Discussion: Section 428(c)(2)(D) of the Act specifies that an agreement between the Secretary and a guaranty agency "shall provide that if * * * any payments are made in discharge of the obligation incurred by the borrower * * * (including any payment of interest accruing on such loan * * *), there shall be paid over to the Secretary * * * (a) proportion of the amounts of such payments * * *" Thus, this provision clearly states that a portion of all payments made by a borrower on a defaulted loan held by a guaranty agency goes to the Secretary. The debtor's obligation includes principal, interest, and collection costs under section 484A(b)(1) of the Act. An agency receives reimbursement for its cost of collecting a defaulted loan through the portion of the collected amounts it is allowed to keep. By assessing and collecting these costs (even though it may only keep a portion of the collection), an agency receives more than if it had never assessed collection costs.

Changes: None.

Section 682.404(g)(3)

Comment: A number of commenters objected to the proposal that the Secretary's equitable share of payments made on defaulted loans be forwarded to the Secretary within 30 days of receipt of those payments because this would conflict with the contracts many guaranty agencies have with their collection contractors. The commenters also argued that it would be difficult to reflect end-of-the-month collections on the monthly reports to the Secretary.

Discussion: Many guaranty agencies use outside collection contractors. In fact, the alternative collection procedure for defaulted loans in Section 682.410(b) requires an agency to use outside collection contractors if the guaranty agency's own efforts to bring the borrower into repayment are unsuccessful. The Secretary recognizes that as payments to the Department are made once a month, it would be unlikely that a payment made at the end of the month would be included in that month's payment to the Secretary.

Changes: The regulations have been amended to allow guaranty agencies 45 days from receipt of payments made on defaulted loans to send the Secretary's equitable share of those payments to the Secretary.

Section 682.406 Conditions of Reinsurance Coverage

Section 682.406(a)(2)

Comment: Many commenters opposed the proposal that the lender provide a payment history and a collection history to the guaranty agency with a default claim. Several commenters believe that the collection history should be required only on the most recent 180 days before the borrower defaulted on the loan.

Discussion: One of the greatest areas of dispute with borrowers is how loan payments have been applied. Without a payment history in the file, it is impossible for the guaranty agency to determine if payments have been applied properly. If a loan is transferred to another servicing system, a print-out of the payment history should be maintained in the borrower's file to meet this requirement. While it is true that in reviewing the due diligence performed on a loan the Secretary is concerned with the 180-day delinquency period that preceded the default, an examination of the activity that occurred on the account before it became delinquent is equally important. A report on this activity is used to verify the repayment status of the borrower at the beginning of the delinquency period.

Changes: None.

Section 682.406(a)(5)

Comment: Many commenters objected to the proposal that would require, as a condition of reinsurance, that a claim returned to the lender due to inadequate documentation be resubmitted to the guaranty agency within 30 days. Many commenters felt that 60 or 90 days should be permitted, while other commenters stated that lenders should be allowed a "reasonable" time to resubmit such a claim. One commenter stated that an interest limitation on resubmitted claims would better ensure that returned claims are resubmitted in a timely manner rather than having resubmission of the claim required within a given number of days as a condition of reinsurance.

Discussion: The Secretary is concerned that loans eligible for default claim payments be processed quickly to allow the guaranty agency to begin its collection efforts against the borrower at the earliest possible time. The Secretary also is concerned that a lender not file a claim it knows is incomplete and will be rejected solely to avoid missing the timely filing deadline or to extend the period for which the lender may receive interest and special allowance payments. The Secretary also recognizes that there are occasions when a claim submitted to the guaranty agency does not initially satisfy the requirements for claim payment but can do so with additional documentation or explanation.

Changes: The Secretary has changed the regulations to provide that a lender may receive full reimbursement for outstanding principal, accrued interest, and special allowance if an otherwise eligible claim that has been returned solely because of inadequate documentation is resubmitted within 30 days after the date the agency returned the claim. If the lender resubmits the claim by the 60th day after the claim was returned by the guaranty agency, principal is reinsured but interest payments will be limited to the 30th day after the claim is returned. The timely filing violation on otherwise eligible claims not resubmitted by the 60th day after being returned by the guaranty agency must be cured using the procedures set forth in Bulletin 88-G-139 (appendix D).

Section 682.406(a)(7)

Comment: Many commenters strenuously opposed the proposed requirement that a guaranty agency pay or return a default claim to a lender within 45 days of the date the lender filed the claim in order for interest accruing beyond the 45th day to be reinsured. The commenters felt that the increased administrative burden to review claims quickly would outweigh any costs realized by the reduction in time allowed guaranty agencies to pay or return claims. Many commenters believed that 45 days would not provide sufficient time for a guaranty agency to adequately review a claim. Other commenters noted that some guaranty agencies begin collection activity when a claim is submitted and that it was not uncommon for this collection activity to be instrumental in causing the borrower to reduce the delinquency status sufficient to bring the loan out of default. Many commenters suggested that the proposed rule might actually increase defaults because a borrower would no longer have the benefit of this additional collection activity.

Discussion: The Secretary believes that it is necessary for the default claim to be reviewed and paid promptly to reduce the amount of the default claim and to allow the guaranty agency to begin collection activity against the defaulted borrower. If an agency is able to bring a borrower into repayment so quickly after the lender has failed to collect on the loan, the Secretary believes it calls into question the lender's collection efforts. However, the Secretary recognizes that in some circumstances (e.g., an unusually large volume of default claims), it might be difficult for a guaranty agency to adequately review a claim within 45 days and, therefore, he has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest. The Secretary wishes to clarify that if a claim is paid after the 60th day, and the guaranty agency's agreement with the lender covers accrued interest, the guaranty agency is required to pay the interest accruing after the 60th day to the lender even though this interest is not eligible for reinsurance. In consideration of commenters' concerns regarding the change in procedures required by this provision, the Secretary is delaying the date this requirement becomes effective.

Changes: The Secretary has extended to 60 days the deadline by which a guaranty agency must pay a default claim to receive reinsurance on all otherwise eligible accrued interest.

Section 682.406(a)(9)

Comment: Some commenters objected to the proposal establishing, as a condition of reinsurance, the requirement that a loan be legally enforceable when the agency pays the claim. The commenters argued that a number of events relevant to the enforceability of the loan may have occurred without the guaranty agency's or lender's knowledge.

Discussion: The Secretary notes that it has always been the Department's policy that a loan be legally enforceable if it is to be insured or reinsured by the Secretary. This provision, which is now contained in Section 682.406(a)(10), is not new and merely codifies within the regulations a long-standing policy that has been part of the FISL and the FFEL programs since their inception.

Discussion: A guaranty agency may use the assets of its reserve fund only as permitted by Section 682.410(a). Paragraph (a)(3) of that section permits a guaranty agency to use a specific portion of its reserve funds "* * * only for payments necessary to perform functions directly related to the guaranty agency's agreement with the Secretary and for proper administration of the guaranty agency's FFEL loan guarantee activities." The costs of operating a loan servicer for loans that have not yet defaulted clearly are unrelated to the expenses incurred by a guaranty agency in providing loan guarantees to lenders and are, therefore, not permissible.

This policy applied to all agencies as of December 26, 1986, the date the final regulations published by the Department on November 10, 1986 went into effect. The Secretary believes that the use of any reserve funds for for-profit enterprises is not permitted because of the risk to funds dedicated to the FFEL program.

Changes: None.

Section 682.410(a)(3)

Comment: Several commenters objected to the proposed restrictions on the use of borrower payments by guaranty agencies contained in Section 682.410(a)(3)(iv). The commenters believed that these restrictions conflict with section 428(c)(6) of the Act, which allows guaranty agencies to use the percentage it retains of borrower payments "for costs related to the student loan insurance program, including the administrative costs of collection * * *"

Discussion: The Secretary agrees with the commenters that the proposed restrictions represent a narrow interpretation of the intent of the statute and that agencies should be allowed to use borrower payments for activities supporting the proper administration of the guaranty agency's loan guarantee activities.

Changes: Section 682.410(a)(3)(iv) has been deleted and "amounts collected on FFEL loans" has been added to the other items specified in Section 682.410(a)(3)(i) that can be used to support the agency's administration of its loan guarantee activities.

Section 682.410(b)(2)

Comment: Many commenters objected to the requirement that a guaranty agency must assess collection charges against the borrower. Other commenters stated that if collection charges had to be assessed, a flat rate should be used by each guaranty agency.

Discussion: The statute clearly specifies that, notwithstanding any provision of State law to the contrary, collection charges must be assessed against the borrower. See section 484A(b) of the Act. The formula referenced in Section 682.410(b)(2) specifies that the amount charged will be the lesser of the costs of collection under the formula in 34 CFR 30.60, or the amount the borrower would be charged if the loan was held by the Department. This amount will be a percentage of the principal and interest outstanding, may be calculated annually, and would be a flat rate assessed against all borrowers with defaulted loans held by that agency.

Changes: None.

Section 682.410(b)(4)

Comment: Some commenters questioned what charges a guaranty agency may capitalize after a default claim has been paid.

Discussion: A guaranty agency is required to capitalize any interest owed on the loan by the borrower. This may include interest that was not paid to the lender by the guaranty agency and interest paid by the guaranty agency that will not be reimbursed by the Secretary.

Changes: This provision of the regulations has been amended to clarify that all interest, rather than "unpaid charges" owed by the borrower, must be capitalized by the guaranty agency.

Section 682.410(b)(5)

Comment: Many commenters vigorously opposed the provision that requires a guaranty agency to grant a borrower an opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation before reporting the default to a credit bureau or assessing collection costs against the borrower. The commenters stated that a defaulted borrower had already had ample opportunity throughout the repayment period to protest the debt and that the administrative review would result in a substantial administrative burden for an agency and would delay any recovery of the debt. In addition, the commenters felt that section 430A of the Act set the parameters of credit bureau reporting for the FFEL programs and that an opportunity for an administrative review was inconsistent with congressional intent.

Discussion: Federal law requires notice and opportunity to contest a debt before a default is reported to a credit bureau. See 31 U.S.C. 3711(f). Moreover, in light of the serious consequences of credit bureau reporting for a borrower, the Secretary believes it reasonable and appropriate for a borrower to have an opportunity to contest the default. The Secretary believes that a guaranty agency should not have difficulty implementing this requirement as it already provides an opportunity for review when it assigns a loan to the Secretary for participation in the Internal Revenue Service (IRS) offset process. The statute authorizing Federal agencies to collect debts by administrative offset also requires the agency to provide a debtor with notice of a proposed IRS offset and at least 60 days in which to present evidence regarding the debt. See 31 U.S.C. 3720A. In the FFEL program, the Secretary provides this opportunity to a debtor by a review and an initial determination by the guaranty agency that held the debtor's loan and maintains records of that loan account. At this time, virtually all guaranty agencies participate in the IRS offset procedures. When a guaranty agency submits loans to the Department for collection through IRS tax-offset, it certifies that the affected borrowers have been granted an opportunity for an administrative review. Both 31 U.S.C. 3711(f) and 31 U.S.C. 3720A require a 60-day notice period and an opportunity for an administrative review of the debt. The administrative review procedures outlined in the regulations meet the credit bureau reporting requirements and the requirements for participation in the IRS offset process. Once the opportunity for an administrative review has been offered to the borrower, the guaranty agency is not required to offer it again. The Secretary expects the volume of requests for administrative reviews received by a guaranty agency to be manageable.

Changes: The Secretary has retained the requirement that borrowers be given an opportunity for an administrative review before a guaranty agency reports the debt to a credit bureau. However, to reduce both the administrative burden for agencies and possible confusion for borrowers, the Secretary has modified Section 682.410(b)(6) to provide that the initial notices sent to borrowers in the administrative review process shall also serve as the initial collection activities for purposes of collecting the loan under Section 682.410(b)(6).

Section 682.410(b)(7)

Comment: Some commenters objected to the proposed requirement in the alternative due diligence collection procedures for guaranty agencies that a guaranty agency refer all loans to one or more collection contractors if its collection efforts are unsuccessful. The commenters believe the agency should be allowed to retain some loans to compete with the collection contractors.

Discussion: A major underlying premise of the proposed alternative due diligence collection procedures is that a guaranty agency will do everything possible within the 180 days during which it attempts to collect to bring the borrower into repayment. If the borrower does not begin repayment, the amount the agency is allowed to retain after paying the Secretary's equitable share and the contingency fee to the collection contractor is much smaller than the amount it would retain if it brought the borrower into repayment through its own efforts. The Secretary believes that there would be little incentive for the guaranty agency to vigorously pursue repayment within the allotted 180-day period if the guaranty agency were allowed to continue to collect on loans after that period.

Changes: None.

Section 682.410(c)(11)

Comment: Many commenters opposed the provision that would require a guaranty agency to provide training and technical assistance or to act as an escrow agent for a school that is experiencing financial difficulty. These commenters felt that a guaranty agency should not "prop-up" a school that is experiencing financial difficulty.

Discussion: The Secretary agrees that it is not always in the best interest of the FFEL program to prolong the existence of schools that are in financial difficulty.

Changes: The Secretary has amended the regulations to require a guaranty agency to provide training and technical assistance, if appropriate, to a school or holder experiencing financial problems and has deleted the provision that would have required a guaranty agency to act as an escrow agent.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

Comment: The Department received many comments regarding the due diligence requirements for lenders collecting loans guaranteed by a guaranty agency. Virtually all the commenters commended the Department's willingness to be more accommodating to lenders' concerns and to reduce the opportunity for a loan to lose reinsurance because of incidental violations of the due diligence collection requirements. While some commenters approved of the proposed procedures with minor modifications, others felt that a complete reworking of the procedures focusing on performance-based standards related to the lender's default rate or compliance with a given standard would better achieve the goals of reducing default and minimizing the lender's risk of losing reinsurance on a loan. A number of other commenters felt that retaining the standards set forth in the Department's current regulations and cure procedures would be preferable to adopting another standard. Other commenters felt the previous standards should be maintained but that the cure procedures for loans that have lost reinsurance should be relaxed.

Discussion: The Secretary is sympathetic to the commenters' concerns that a lender should not face an undue risk of loss of reinsurance because of technical violations of a collection standard. However, the Secretary is also convinced that the level and intensity of effort expended in the collection of a student loan relates directly to the likelihood of its default. One commenter, in supporting the Secretary's development of performance-based collection standards, noted that stringent standards are necessary for some lenders but are inappropriate for others because of the care and diligence with which those lenders exercise their fiduciary obligations. The Secretary believes that, while performance standards for lenders might be attractive, establishing an acceptable standard of performance is not possible because the make-up of lenders' portfolios differs greatly, e.g., by type of school and region of the country, etc. Compliance with a given performance standard also presents difficulties because an audit using a statistically valid sample of a lender's entire student loan portfolio, not just claims submitted, would have to be used to determine an acceptable level of compliance. Changes that occur subsequent to the audit that affect compliance, e.g., loan volume, personnel or computer changes, etc., could not be accounted for or even anticipated by the audit. Finally, given the serious and detrimental effect of a defaulted loan to the borrower, the Secretary is strongly opposed to the idea that a default claim could be paid by a guaranty agency without a review by the agency to ensure that the borrower was given the opportunity to respond to a diligent collection effort on the loan. Establishing different standards for different lenders would make that review extremely difficult and time-consuming. The commenters who generally supported the proposed Section 682.411 felt that some modifications would be necessary for lenders to be able to continue to use the collection systems designed to meet the standards in the current FFEL program regulations. It has always been the Secretary's intent that lenders and servicers that made substantial investments in systems to meet the existing collection requirements should be able to meet the new requirements without making substantial modifications to their systems.

The cure procedures that were issued in March 1988 and published as appendix D of the NPRM will not be relaxed. They were developed after extensive discussion and consultation with representatives of the lender and guaranty agency community and the Secretary continues to believe that they adequately address good-faith violations of the regulatory requirements.

Changes: After carefully reviewing the comments received on Section 682.411 and meeting with various representatives of the industry, the Secretary has decided to adopt, with some modifications, the standards proposed in the NPRM. The Secretary has amended the regulations so that no required collection activity during a borrower's

delinquency is contingent upon the timing, success, or failure of another collection activity. In addition, the Secretary has changed the due diligence requirements to ensure telephone collection efforts will be used throughout the delinquency cycle, rather than only at the beginning or end, as the Secretary believes that telephone collection activity is most effective if used at regular intervals throughout the delinquency.

Section 682.411(a)

Comment: Many commenters indicated that the language in the NPRM concerning the due diligence requirements for endorsers was unclear. Other commenters opposed the Secretary's proposal to regulate due diligence for endorsers and felt it only would discourage the use of endorsers. Other commenters noted that some State laws prohibit collection efforts against an endorser until after default. Many commenters were also concerned about the consequences of failing to complete the collection activities required of endorsers.

Discussion: The Secretary believes that the use of endorsers can be an effective means of reducing defaults. However, the value of having an endorser on a loan is eliminated if the endorser is not subject to collection activity when the loan becomes delinquent. The Secretary believes that the collection activities undertaken for an endorser should differ from those applied to the borrower and generally should not begin until the borrower is significantly delinquent. Any State law that normally would prohibit collection activity against an endorser from occurring before default occurs is preempted by Section 682.411(n).

Changes: Section 682.411(m) has been added to the regulations to clarify that an endorser on a loan must receive at least two collection letters in addition to a final demand letter and at least one diligent effort for telephone contact. If during the delinquency cycle, but prior to the sending of the final demand letter, the lender receives information indicating it does not know the address of the endorser, the lender must attempt to locate the endorser through the use of normal skip-tracing techniques, which must include at least an inquiry to directory assistance. In addition, Section 682.406(a)(3) has been revised to state explicitly that due diligence against an endorser is a condition of reinsurance. If a lender fails to perform all, or any portion of, the required due diligence with an endorser, the loan will not be eligible for reinsurance until the missing activities have been performed. The lender may perform the collection activities late, but the timely-filing deadlines and associated penalties still apply. Missed due diligence activities with an endorser will not be counted as violations but must be performed.

Comment: Several commenters noted that the term "outside the United States" would exclude telephone efforts against borrowers residing in Puerto Rico, Canada, and Mexico who are easily accessible by telephone.

Discussion: The Secretary agrees with the commenters that diligent telephone efforts to contact borrowers residing in these areas should not be excluded.

Changes: The regulations have been revised to provide that the lender must make telephone calls to borrowers who reside in a State (as that term is defined in Section 668.2), Canada, and Mexico.

Section 682.411(b)

Comment: A number of commenters were concerned about how violations would be counted if the first payment due date was not established in a timely manner.

Discussion: Section II of appendix D discusses the requirements for establishment of the first payment due date. The deadlines and penalties outlined in that discussion are based on the current regulations under which a violation could not occur until the 31st day of delinquency. The penalties increase depending upon how late the first payment due date is established. Under the new standards contained in Section 682.411, a violation occurs if the first payment due date does not occur by the deadline contained in Section 682.411(b). The Secretary has decided that in determining the penalties to be associated with the failure to establish a first payment due date on a timely basis, the Secretary will look at the period between when the first payment due date should have been established according to Section 682.411(b) and the date of the actual first payment due date. If this period is more than 45 days, reinsurance is lost, any special allowance received for the period that begins 31 days after the date the first payment due date should have been established according to Section 682.411(b) must be returned, and the lender must receive a full payment or signed repayment agreement in order for reinsurance to be reinstated. If this period is more than 35 days, but not more than 45 days, a single violation will be assessed against the lender.

Changes: None.

Comment: Several commenters opposed the inclusion of the phrase "more than half of which" payment is later made. The commenters believed that this wording would require a major change to the collection systems of many lenders. They believed that lenders should not be required to count one half of a payment as advancing the due date and curing delinquency for that month. Many commenters believed that the language should be revised to allow a guaranty agency to determine a reasonable payment-shortfall tolerance if a full payment is not received before the date the lender must consider the borrower delinquent.

Discussion: The Secretary recognizes that the language as written might create substantial administrative burden associated with half payments. The Secretary agrees that a reasonable payment-shortfall tolerance amount needs to be established under which a lender need not initiate collection activities if the lender's system allows for such a tolerance. The Secretary also believes that such a tolerance must be standardized across the FFEL program and not vary by guaranty agency.

Changes: The regulations have been revised to provide that a payment that is within $5 of the amount required to advance the due date may advance the due date if the lender's procedures allow for that advancement.

Section 682.411(c)

Comment: Many commenters objected to the proposal that the first collection notice be sent by the 10th day of delinquency. Some commenters submitted data showing that many borrowers who do not meet the payment due date make a payment shortly afterward. Commenters believe that sending a delinquency notice to a borrower so soon after the payment due date was missed is counterproductive and will

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increase costs to the lender without any commensurate benefit to the FFEL programs. Commenters also pointed out that to provide themselves sufficient lead time to comply with this requirement, lenders would have to reprogram their computer systems to generate the late notices no later than the seventh day of delinquency.

Discussion: The Secretary believes that a notice sent very early in a borrower's delinquency impresses upon the borrower the seriousness of the delinquency status and provides greater incentive to the borrower to make a payment to bring the loan current and avoid further delinquency and default. The Secretary does not believe that lenders will incur significantly greater costs by sending the initial collection notice by the 10th day of delinquency rather than at a slightly later date.

Changes: None.

Section 682.411(d)

Comment: A number of commenters objected to the proposed requirement in the NPRM that each collection letter sent to a borrower must include the consequences of default, including the possibility that litigation may be initiated against the borrower by the guaranty agency. The commenters felt that collection letters sent during the delinquency cycle should be progressively more forceful to be most effective.

Discussion: The Secretary agrees that sending an extremely forceful collection letter early in the delinquency cycle may needlessly alienate a borrower who, for any number of reasons, is experiencing a short-term delinquency. The Secretary also agrees that a series of progressively more forceful collection letters is likely to be more effective than a series of identical letters.

Changes: The regulations have been amended to require that only two of the four letters that lenders are required to send to delinquent borrowers outline the consequences of default. Although the timing of these letters is left to the discretion of the lender, the Secretary intends that the two most forceful letters should be sent late in the delinquency cycle, when they are likely to have the greatest effect on the borrower.

Comment: A number of commenters observed that the language in the NPRM required the final demand letter to be sent after the 180th day of delinquency. The commenters felt that the lender should be able to send the final demand letter earlier than the 180th day of delinquency in order to have more time to prepare and file the claim with the guaranty agency.

Discussion: The Secretary agrees with the commenters. The lender is required to wait 30 days after sending the final demand letter before filing a default claim to give the borrower a chance to respond before a claim is filed with the guaranty agency. The Secretary understands that the proposed rule would have left the lender with only a short time period to file a timely claim.

Changes: The regulations have been amended to allow the lender to send the final demand letter on or after the 151st day of delinquency.

Section 682.411(e)

Comment: A number of commenters objected to the provision that would have required a borrower, after the final demand letter had been sent, to avert default only by making payments sufficient to bring the loan current. The commenters felt that lenders should have the option of not filing a default claim if the borrower could make payments sufficient to bring the loan out of default or sign a forbearance agreement to cover all or some portion of the delinquency.

Discussion: The Secretary agrees with the commenters that there might be circumstances where the borrower might be able to reduce the extent of the delinquency, and thus avoid default, but still not be able to repay the loan in full.

Changes: The Secretary has revised the regulations to allow the lender to permit a borrower who is more than 180 days delinquent to avert default by bringing his or her account less than 180 days delinquent. The requirement that the borrower accomplish this by making payments has been deleted.

Section 682.411(g)

Comment: A commenter requested that the Secretary clarify whether skip-tracing may be undertaken on a borrower prior to the skip-tracing of a delinquent borrower required under Section 682.411(g) and, if it is undertaken but unsuccessful, whether skip-tracing activities must be repeated when the borrower becomes delinquent. The commenter stated his belief that skip-tracing should be undertaken as soon as the lender receives information indicating the address of the borrower is unknown, even if this takes place in the grace period prior to the borrower entering repayment.

Discussion: The Secretary agrees with the commenter that a lender should have the flexibility to undertake skip-tracing activities as soon as the address of a borrower becomes unknown. Furthermore, he strongly supports this approach to loan collection. The Secretary believes that a lender should not be required, if the skip-tracing activities are unsuccessful, to repeat those activities later in the borrower's delinquency cycle unless the lender receives a payment or some other communication from the borrower indicating the borrower's address.

Changes: The Secretary has added a new paragraph (g) to Section 682.208 specifying that a lender may undertake the skip-tracing activities specified in Section 682.411(g) when a borrower is not delinquent if the lender receives information indicating that the borrower's address is unknown.

Comment: Many commenters felt that the skip-tracing requirements were unclear and were particularly concerned about what penalties a lender would incur if some or all of the skip-tracing was not performed.

Discussion: The Secretary believes that skip-tracing should begin soon after the lender learns the borrower's address is unknown and continue until all possible sources of information available to the lender regarding the borrower's address have been exhausted. Once these efforts have been concluded, or the final demand letter has been sent, the Secretary does not believe that there is any point in requiring further activity until the loan is eligible for claim payment.

Changes: The Secretary has revised the regulation so that a lender may be considered to have met the requirement to diligently attempt to locate the borrower if it attempts to contact, by the date of default, each individual and entity identified in the borrower's file and if there is no gap of more than 45 days between attempts to contact those individuals or entities. If the lender does not contact one or more of the individuals or entities identified in the borrower's loan file and the borrower's address remains unknown, a single due diligence violation will have occurred. If the guaranty agency requires that the lender request preclaims assistance in the event the borrower's address becomes unknown, and the lender does not request the preclaims assistance within 10 days of when it receives information indicating it does not know the borrower's current address, another violation will be considered to have occurred. If a lender performs no skip-tracing on a borrower whose address is unknown, up to three violations would be considered to have occurred. However, under the definition of "Gap in collection activity" in Section 682.411(i), a gap begins the day after a lender receives information indicating the lender does not know the borrower's current address. A gap is also defined as the period between collection activities. Any attempt to contact an individual or entity in the borrower's loan file is a collection activity. A gap of more than 45 days (60 for a transfer), necessitates a cure via the lender's receipt of a signed repayment obligation or a full payment. See appendix D. If a lender does not contact each individual or entity in the borrower's loan file by the date of default, but no gap of more than 45 days exists, the lender must satisfy the requirements outlined in I.E.1. of appendix D, or receive a full payment, or a new signed repayment agreement for reinsurance to be reinstated.

Section 682.412 Consequences of the Failure of a Borrower or Student to Establish Eligibility

Section 682.412(a)

Comment: Some commenters expressed concern about subjecting borrowers who receive loan proceeds but do not attend classes to the provisions of Section 682.412. The commenters recommended that these borrowers be allowed to receive a grace period and begin normal repayment on the loan.

Discussion: Federal student financial assistance is intended to assist students and their parents to meet the costs of postsecondary education. If a student receives a FFEL program loan but does not attend school, that student has no costs of attendance. Therefore, the borrower must repay immediately the funds for which he or she is now ineligible. The Secretary believes that an individual who borrows and does not matriculate should not receive FFEL program benefits such as the grace period or the 10-year repayment period normally provided to student borrowers.

Changes: None.

Comment: Several commenters objected to the subjective evaluation that a lender would be required to make regarding a borrower's intentions under proposed Section 682.412. The proposed rules specify that the lender would exercise the provisions of Section 682.412 against a borrower if it determined that a borrower's initial eligibility for a FFEL program loan resulted from information that the borrower knew or should have known was incorrect. The commenters stated these such actions should be taken only on the basis of substantiated fact.

Discussion: The Secretary agrees that subjective determinations cannot be made effectively by lenders and that they should only undertake these actions based on information they can substantiate. The Secretary believes these actions should be taken when the lender can substantiate that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information to support his or her eligibility. These situations are to be distinguished from borrower ineligibility resulting from school certification error or lender error in making the loan where the Secretary does not intend the provisions of Section 682.412 to apply.

Changes: The regulations have been revised, consistent with the changes made to similar provisions in Section 682.208(f) of the regulations, to require a lender to exercise the provisions of Section 682.412 when it receives substantiated information supporting the fact that a borrower, or a student on whose behalf a parent is borrowing, provided false or erroneous information upon which his or her eligibility was based or took other actions leading to a borrower's ineligibility. The provisions also apply to borrowers who receive loan proceeds but do not attend classes.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Section 682.414(a)(3)

Comment: Many commenters stated that they believed lenders should be able to keep a copy of a signed repayment obligation or an affidavit of the borrower's debt in lieu of the original application and promissory note.

Discussion: The Secretary continues to feel strongly that any standard of due diligence that lenders are required to exercise should require that the lender maintain a copy of the original documents that are the basis of the debt. While a signed repayment obligation or affidavit may reflect the borrower's affirmation of the debt's existence, the Secretary believes it would be inconsistent with his responsibilities to allow these types of documents to be retained in lieu of the original application and promissory note.

Changes: None.

Section 682.414(c)

Comment: Many commenters questioned the Secretary's authority in Section 682.414(c)(2) to prohibit a guaranty agency from requiring the presence of an agency representative during interviews conducted with personnel during a review of the agency. The commenters believe this prohibition denies the agency due process.

Discussion: The Secretary feels that it is imperative that the Department's representatives have complete access to guaranty agency personnel and records during reviews of the agency's administration of the FFEL programs. The Secretary further believes, and prior experience indicates, that the presence of agency representatives during interviews with personnel or recording the interviews results in less than a candid flow of information among the reviewers and the agency's personnel. The Secretary believes that an agency receives sufficient due process related to findings that might

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result from a review and that the restriction on attendance at interviews does not deny due process.

Changes: None.

Section 682.502 The Application To Be a Lender

Section 682.502(b)(4)

Comment: In determining whether to enter into an agreement with an applicant to become a participating lender in the Federal GSL programs, one commenter suggested that the Secretary consider the applicant's default track record under the Title IV loan programs.

Discussion: The Secretary believes that Section 682.502(b)(4) provides him with sufficient authority to examine a lender's prior default experience to determine whether to enter into an agreement with the lender. This is because it provides that the Secretary will consider "whether the applicant has had prior experience with a similar Federal, State, or private, nonprofit student loan program * * *." The Secretary believes that this allows him to examine all aspects of a lender's previous performance with Title IV and other programs, including the lender's default rates.

Changes: None.

Section 682.505 Insurance Premium

Section 682.505(c)

Comment: One commenter argued that there is no basis for the FISL insurance premium calculation to be any different from the insurance premium calculation required by statute for guaranty agencies.

Discussion: The statute provides for a separate insurance premium calculation for FISL loans. See section 429(c) of the Act.

Changes: None.

Section 682.507 Due Diligence In Collecting a Loan

Section 682.507(a)(1)

Comment: Several commenters stated that Section 682.507(a)(1) should allow for the release of endorsers or, if not, the lender should be directed to use the due diligence collection procedures in Section 682.411 with cosigners and endorsers. Some commenters argued that the use of endorsers is not allowed in the FISL program and questioned why they are mentioned in the regulations.

Discussion: Section 427(a)(2)(A) of the Act provides, in part, that a loan is insurable by the Secretary if the promissory note or other written agreement is made without security and without endorsement, except endorsement may be required if the borrower is a minor and his or her signature would not create a binding obligation under applicable State law. Clarification regarding the release of endorsers under the FISL program was provided to lenders in Bulletin L-35, dated June 27, 1978. This Bulletin stated that the Secretary would not pay a default claim on a loan made on or after September 30, 1977 that contained an unauthorized endorsement. However, it allowed a lender to release an unauthorized endorser before the loan became delinquent without jeopardizing Federal insurance. The Bulletin stated further that if the borrower was a minor (and could not legally have entered into a contract) at the time the promissory note was executed, the authorized endorser could not be released. Although due diligence steps with respect to authorized endorsers in the FISL program are not specified, the collection activities required for endorsers in Section 682.411 are acceptable to the Secretary.

Changes: The Secretary has revised the regulations to reflect that a lender should exercise due diligence in collecting a loan with regard to an authorized endorser.

Comment: Many commenters suggested that the collection procedures for FISL loans should parallel the due diligence collection procedures required of lenders in the guaranty agency program in Section 682.411.

Discussion: The Secretary does not believe it is necessary, at this time, to change the FISL due diligence procedures for lenders because loans no longer are being made under the FISL program. However, as there are only minor differences between the requirements of Section 682.411 and Section 682.507, the Secretary believes lenders should be allowed to use the due diligence procedures in Section 682.411 in lieu of the requirements of Section 682.507.

Changes: The regulations have been revised to state specifically that a lender may use the due diligence procedures in Section 682.411 in lieu of the requirements in Section 682.507.

Section 682.508 Assignment of a Loan

Comment: Two commenters suggested that 45 days be inserted in place of the word "promptly" for notifying borrowers of the purchase or assignment of their loans. They believe this will require lenders holding FISLs and FFELs to service them consistently.

Discussion: The Secretary agrees with the commenters that, if possible, consistent servicing of FISL and guaranteed loans is desirable.

Changes: The regulations have been revised to conform to Section 682.208(e)(1) and include the 45-day notice requirement suggested by the commenters.

Section 682.513 Factors Affecting Coverage of a Loan Under the Loan Guarantee

Comment: Several commenters recommended that the phrase "* * * or if it would not be payable on a default claim by the Secretary * * *" be removed from Section 682.513(b). The commenters argued that a lender should not be at risk for principal on any bankruptcy, death, or disability claim if no action or inaction by the lender affected whether the claim is collectable.

Discussion: The Secretary believes that a due diligence violation affecting the insurability of a loan before the lender's filing of a death, disability, or bankruptcy claim is sufficient grounds to reject payment of a claim. A death, disability, or bankruptcy should not be an assurance to the lender that the claim will be paid. The Secretary believes a lender's assurance for claim payment must be based on its

total due diligence performance in making, disbursing, servicing, and collecting the loan.

Changes: None.

Section 682.515 Records, Reports, and Inspection Requirements for Federal GSL Programs Lenders

Section 682.515(a)(3)

Comment: One commenter suggested that this section be modified to allow documents to be retained on optical-disk media.

Discussion: The Secretary agrees with the commenter that other methods for storing and retrieving data should be recognized.

Changes: A change has been made. The Secretary is revising Section 682.515(a)(3)(i) to include optical-disk media or other machine readable formats as an optional method for storing and retrieving data. This change has also been made in Section 682.414(a)(4)(i).

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs.

Section 682.600(a)(1)

Comment: Several commenters stated that the Secretary should include proprietary institutions and postsecondary vocational institutions in Section 682.600(a)(1) because 34 CFR 600.2 defines four types of schools as eligible institutions. The commenters believe that these two regulatory provisions should be consistent to prevent any confusion surrounding the types of institutions that are eligible to participate in the FFEL programs.

Discussion: The Secretary shares the commenters' concern regarding the need to clarify what constitutes an eligible institution. For purposes of the FFEL programs, section 435(a) of the Act and 34 CFR Section 682.200 specify two types of eligible institutions: institutions of higher education and vocational schools. A school that meets the definition of a vocational school may also meet the definition of proprietary institution or postsecondary vocational institution in 34 CFR 600.2. The school types listed in 34 CFR 600.2 are not mutually exclusive.

Changes: None.

Section 682.600(a)(2)

Comment: One commenter recommended that the Secretary modify proposed Section 682.600(a)(2) to permit only the owner or the institution's Chief Executive Officer to sign the written program participation agreement on behalf of the institution. The commenter recommended this because he felt it was the only way to ensure that the institution's most senior management official understood the administrative and fiduciary responsibilities required of a participating school. The commenter did not believe it was in the best interest of the FFEL programs to delegate this responsibility to another authorized official of the school.

Discussion: The Secretary agrees with the commenter that this change is necessary to protect the integrity of the FFEL programs. Further, the program participation agreement form used by the Department allows only for the signature of the Chief Executive Officer of the institution.

Changes: A change has been made. The Secretary has revised the regulations to specify that the Chief Executive Officer of the institution must sign the program participation agreement with the Secretary.

Section 682.601 Rules for a School That Makes or Originates Loans

Section 682.601(a)

Comment: One commenter stated that Section 682.601(a)(3) should be modified to stipulate that an eligible school lender may not make loans to more than 25 percent of the undergraduate students at the school.

Discussion: Section 435(d) of the Act specifies that an eligible school lender may make loans to 50 percent of its undergraduate students. The Secretary has no authority to change this statutory provision.

Changes: None.

Comment: A number of commenters recommended that the Secretary retain the paragraph in current regulations that allows the Secretary to consider any evidence that suggests that a school lender may not have provided sufficient counseling to students to seek loans from a commercial lender before the school makes a loan to a student. Any pattern of denial letters or students' sworn statements may reveal that a school lender did not make a good-faith effort to counsel students to obtain loans from a commercial lender.

Discussion: The Secretary agrees with the commenters.

Changes: The paragraph detailing what the Secretary may consider in deciding whether a school has given sufficient counseling to students to seek loans from commercial lenders first has been reinstated.

Section 682.601(b)

Comment: Many commenters stated their objection to the proposed elimination of the requirement that the student have documented evidence that he or she has been denied a loan from a commercial lender before obtaining a loan from a school lender.

Discussion: The Secretary agrees with the commenters that documentation is necessary to implement section 435(d)(2)(D) of the Act. This provision of the Act specifies that, to be an eligible lender of a FFEL loan, a school may not make a loan to an undergraduate student unless the student previously has received a loan from the school or has been denied a loan by an eligible lender.

Changes: A change has been made. The Secretary has revised the regulations to require the student to provide a written statement of denial for a FFEL loan from an eligible commercial lender before applying to the school for a FFEL program loan. Consequently, the written documentation requirement previously contained in Section 682.601(c) of the Department's current regulations has been reinstated in these final regulations.

Section 682.601(c)

Comment: One commenter expressed concern that a school might use the factors listed in Section 682.601(c) (1), (2), and (3) of the NPRM when requesting a waiver of the 50 percent school lending limit to circumvent the requirements contained in Section 682.601(a). The commenter believes that a school should be required to prove that economically disadvantaged students would be better off for having received the training offered by the school when requesting such a waiver. Further, the commenter does not believe "uniqueness" is a valid reason to permit a school to take advantage of a student who may not be a well-informed consumer.

Discussion: The Secretary does not agree. Section 682.601(c) contains some, but not all, of the factors the Secretary uses to evaluate a school's request to waive the 50 percent lending limit because imposing that limit would create substantial hardships for the school's present or prospective students. The Secretary believes that these factors represent reasonable criteria to use in determining whether a waiver will provide access to FFEL program loans to students who otherwise would not have access.

Changes: None.

Section 682.602 Correspondence School Schedule Requirements

Section 682.602(b)

Comment: One commenter objected to the requirement that a correspondence school establish and provide a schedule for lesson submission to a prospective student before the student actually makes a commitment to enroll in a course of study by correspondence. The commenter argued that each schedule is individualized and that the actual lesson due dates for each lesson that makes up the course schedule are contingent upon the student's actual program start date.

Discussion: The Secretary does not agree with the commenter. The Secretary believes that it is essential to provide a prospective student who is considering a program of study by correspondence with a schedule containing sufficient information to help the student make a good decision about undertaking the course of study. The Secretary understands that a course schedule provided before the student enrolls is a tentative schedule that might require later modification. However, the Secretary believes that information provided to a prospective student on the content of lessons in the program and the sequence of those lessons would greatly assist the student in determining whether a course of study meets his or her individual needs and lifestyle. Finally, the Secretary believes that a prospective student who receives this kind of information is more likely to complete the program successfully.

Changes: None.

Comment: One commenter recommended that the schedule required of correspondence schools also should contain information about the location of any residential training required by the program.

Discussion: The Secretary agrees that the location of residential training is often an important factor in whether a student is able to complete a course of study by correspondence and, therefore, a prospective student should have this information before he or she makes a commitment to a course of study.

Changes: A change has been made. The school is required now to provide the exact location of any required residential training as part of the course schedule given to prospective students.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Comment: Several commenters recommended the deletion of Section 682.603(c), which requires that a school delay loan certification for first time Stafford and SLS borrowers entering the first year of an undergraduate program of study. The commenters stated that this provision is no longer necessary because section 428G(b)(1) of the Act now requires delayed delivery of loan proceeds to the same category of borrowers until 30 days after the borrower begins a course of study.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.603(c) of the regulations has been deleted.

Section 682.603(d)

Comment: Several commenters suggested that the school should not be required to monitor annual loan limits in certifying an application for a loan. The commenters believe that the school's sole responsibility in the loan certification process should be to determine the applicant's unmet need for loan eligibility.

Discussion: A school's responsibility for monitoring a student's annual loan limits and aggregate maximum loan limits is mandated by section 484(g) of the Act. Also, 34 CFR 668.19(a)(4)(ii) stipulates that a school must return to the lender any Stafford or SLS proceeds that, according to a financial aid transcript, would cause the student to exceed a loan limit under the Stafford or SLS programs. A school is held responsible for information relating to an applicant's annual and aggregate loan limits to the extent that the school's records contain such information.

Changes: None.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(b)(2)

Comments: Many commenters disagreed with the requirement of Section 682.604(b)(2)(ii) that bases the school's ability to deliver loan proceeds to a student who delays attendance on whether the student notifies the school of his or her plans. Commenters believe that a school should be able to consider any student who begins attendance no later than 30 days after the first day of classes to have maintained eligibility for the loan.

Discussion: The Secretary agrees that the school should be allowed to consider such a borrower to have maintained eligibility and deliver the loan proceeds even if

the student does not notify the school of his or her intentions. However, the school also must comply with the change made in Section 682.604(d)(3), which requires that if the student fails to register or begins attendance on a delayed basis, the school must return the check to the lender no later than 30 days after the first day of the period of enrollment. To comply with this requirement, the school must develop a system to monitor whether students begin attendance on a delayed basis in sufficient time to prevent having to return the check to the lender by the 30th day.

Changes: A change has been made. A school may consider a student to have maintained eligibility from the first day of the period of enrollment if the student delays attendance.

Comments: Many commenters objected to the proposal that a school could deliver FFEL loan proceeds to a student after the school receives notice of its loss of institutional eligibility if the first disbursement of the loan had been delivered to the student before the institution's receipt of the notice. The commenters believe that the student only will have incurred increased debt for a program of questionable quality and that this provision is not in the best interests of the FFEL programs.

Discussion: The Secretary notes that 34 CFR 668.25(c) authorizes a school to deliver loan proceeds under these circumstances. See 56 FR 33332, 33341 (July 19, 1991). The Secretary believes it is important to provide the second disbursement of a FFEL program loan to a student who has received the first disbursement of the loan, and who has completed a significant portion of his or her program of study. The Secretary believes that a loss of access to loan funds will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default. Although the Secretary shares the commenters' concern that the borrower has incurred increased debt, the Secretary believes the borrower is better served by having the opportunity to complete his or her program of study and secure employment.

Changes: None.

Section 682.604(c)(3)

Comment: Many commenters objected to the exception provided in proposed Section 682.604(c)(3) that would permit delivery of loan proceeds through EFT to borrowers attending an initial loan-counseling session without written authorization. The commenters stated that it was unclear whether the Secretary intended to exempt these borrowers from providing written authorization for the release of loan funds or from the 30-day time frame provided for securing written authorization. Many commenters questioned the relationship between attending an initial loan-counseling session and providing written authorization.

Discussion: The Secretary agrees with the commenters that the purpose of the exception is unclear. The Secretary also believes that the proposed exception would be contrary to the Secretary's long-standing view that the borrower's written authorization for the release of loans by EFT is a vital measure to protect students in the FFEL programs.

Changes: The exception has been deleted from Section 682.604(c)(3).

Section 682.604(d)

Comments: A number of commenters objected to the proposed requirement under Section 682.604(d)(1)(ii)(B) that if a student asks the school to help manage his or her loan funds for the academic year, the school must establish a separate trust account. Many commenters believe that the requirement is both administratively burdensome and costly to a school. The commenters also indicated that such a student service should be optional rather than required.

Discussion: The Secretary has decided to permit, but not require, schools to provide this service to help students budget loan proceeds. If a school chooses to offer this student service, all of the excess loan proceeds that students request the school to hold in its account must be maintained in a separate account. The Secretary does not intend to require that a separate account be maintained for each borrower. However, consistent with provisions in the Campus-Based program regulations, these may not be commingled with other accounts of the school. The account may be an interest-bearing account. The Secretary considers the interest earned by the school on this account to be an administrative allowance for providing this student service.

Change: A change has been made. The regulations have been changed to provide that if the student requests, in writing, that the school hold loan funds to assist the student in budgeting those funds, a school may, but is not required to do so.

Section 682.604(f)

Comment: A number of commenters suggested that the requirement that the initial counseling required by Section 682.604(f) be conducted either in person or by videotape presentation is not a reasonable expectation for a student who is enrolled in foreign study abroad under the auspices of a school in the United States.

Discussion: The Secretary agrees with the commenters.

Change: The regulations have been revised to provide that the initial counseling requirement for students enrolled in a program of study abroad approved for credit by the home institution will be the same as that for students enrolled in a correspondence program.

Section 682.605 Determining the Date of a Student's Withdrawal.

Section 682.605(b)(1)

Comment: Several commenters argued that the regulations should impose a limit on the period in which a school has to determine that a student has withdrawn if the student does not formally withdraw. They believe that a time limit is essential because such a determination directly affects a student's right to a refund and the timely payment of a refund to a lender on behalf of the student.

Discussion: The Secretary agrees that there should be a maximum time period for a school to determine a student's date of withdrawal under Section 682.605(b)(1)(ii). The Secretary believes that the lack of a specific time period exacerbates the problem of unpaid and untimely refunds.

Changes: A change has been made. The Secretary has revised the regulations to provide that if the student drops out without notifying the school, the school must determine the student's date of withdrawal no later than 45 days after the expiration date of the academic term for a school with standard terms, and no later than 25 days after a student's last date of attendance for a school using clock hours or credit hours without standard terms. The Secretary believes the time frames established in these regulations are reasonable given the different methods used for determining progress at various schools.

Section 682.605(b)(2)

Comment: One commenter objected to the proposed rule requiring a school to determine the withdrawal date for a student who was granted a leave of absence, approved under paragraph (c) of this section, and who fails to return to school at the expiration of the leave of absence, to be the date of the first day of the leave of absence. The commenter argued that this requirement conflicts with the requirement of Section 682.607(c)(2) that requires a school to pay a refund to a lender within 30 days after the last day of a student's approved leave of absence should the student not resume his or her program of study.

Discussion: The Secretary disagrees with the commenter. The Secretary notes that Section 682.605(b)(2) establishes a procedure for a school to determine the withdrawal date for a student who fails to return to school after a leave of absence has expired. This date is determined for the purpose of a school reporting to the lender the date the student has withdrawn from the school and for determining when a refund must be paid under Section 682.606. The Secretary also notes that Section 682.607(c)(2) requires that a school must make a refund, if applicable, within 30 days after the last day of a leave of absence, not 30 days after the withdrawal date.

Changes: None.

Section 682.609 Remedial Actions

Section 682.609(a)

Comment: Many commenters stated that a borrower whose eligibility has been affected by a school's error in determining financial need or in certifying the loan application should not lose the rights and benefits afforded other eligible FFEL program loan borrowers if the school is required to purchase all or a portion of the loan. The commenters believed that the school should absorb any losses on interest benefits or special allowance payments resulting from such a situation.

Discussion: The Secretary does not believe that a change to the regulations is necessary. It has been the Secretary's longstanding view that a student who becomes ineligible for a loan due to a school error does not lose his or her rights. The school, like any other holder of a FFEL program loan, is bound by the terms of the promissory note. The school is also responsible for payment to the Secretary of any interest and special allowance paid by the Secretary on the ineligible portion of the loan.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section 682.610(b)

Comment: Several commenters recommended that Section 682.610(b) of the regulations be revised to allow a school to keep a copy of the loan certification data electronically transmitted by the school to the lender or guaranty agency in lieu of a copy of a paper application form. The commenters believe it is important for the regulations to reflect the electronic application processing now in place at many schools.

Discussion: The Secretary agrees that the regulations should reflect electronic application processing and schools should be allowed to comply with the record-retention requirements by maintaining this data in a computer or optical-disk medium. The Secretary expects, however, that a school, upon request, will be able to produce a hard copy of the loan certification data.

Changes: The regulations have been revised to allow a school to retain the data electronically transmitted as part of the loan certification process to satisfy the record-retention requirements.

Section 682.610(d)

Comment: Several commenters expressed concern that the 5-year record-retention requirement under Section 682.610(d)(1) is not long enough. The commenters believe the information contained in a school's record on a borrower is useful when the borrower enters the repayment period or when a default claim is filed, which may be after 5 years.

Discussion: The Secretary agrees with the commenters. In addition, the Secretary recognizes that there may be instances when it is necessary for schools to retain records to respond to on-going audits.

Changes: The regulations have been revised to require the school to retain records for 5 years after the borrower's last day of attendance and to retain records involved in any loan, claim, or expenditure questioned by a Federal audit until the audit questions have been resolved.

Comment: A number of commenters suggested that the inspection requirements in Section 682.610(e)(2) deny a school due process and are unreasonable.

Discussion: The Secretary believes that it is imperative that the Department's representatives have complete access to a school's records during an investigation of the school's administration of the Title IV programs. Further, the Secretary believes, and his experience has shown, that allowing the presence of a school representative during an interview with school personnel or allowing the school to record the interview would result in less than a candid exchange of information among investigators and the personnel interviewed. The Secretary believes the school receives sufficient due process related to findings that might result from such an inspection and does not believe that a prohibition on attendance at interviews by school representatives violates due process.

Changes: None.

Section 682.610(f)

Comment: Several commenters argued that Section 682.610(f)(2), which requires the school to notify the holder of a borrower's loan within 30 days of receiving information on the borrower's change of permanent address, is an administrative burden for the school because the provision places no limits on the reporting requirement. The commenters noted that as written the requirement applies to all borrowers who ever attended the school for the life of their loans, the duration of which the school is unlikely to even know. The commenters also indicated that they believe the requirement is not feasible since loan transfers are now commonplace and schools do not always know the current holder of a borrower's loan.

Discussion: The Secretary understands that a school might not always know the current holder of a borrower's loan. However, in light of the increasing volume of loan defaults, the Secretary believes that schools have a particular responsibility to share any information they have on a borrower's whereabouts. The Secretary agrees with the commenters that a requirement that the school provide information within 30 days of the school's receipt of the information throughout the life of the borrower's loan, without regard to the lender's need for the information, might be overly burdensome.

Changes: The regulations have been revised to require the school to notify the current holder of the loan of a borrower's change of permanent address only while the borrower is enrolled at the school. Section 682.610(f)(1) continues to require the school to provide this information upon request of the Secretary, guaranty agency, or lender.

Section 682.700 Purpose and Scope

Section 682.700

Comment: Several commenters asked the Secretary to clarify whether subpart G, which governs fine, limitation, suspension, and termination proceedings, applies directly to actions taken by guaranty agencies or whether policies of the guaranty agency must be consistent with, but not the same as, subpart G.

Discussion: The Secretary specifies in Section 682.401(b)(6)(i)(A) that lender's eligibility may be subject to a limitation, suspension, or termination action by a guaranty agency under standards and procedures that are substantially the same as subpart G.

Changes: None.

Section 682.701 Definitions of Terms Used in This Subpart

Section 682.701 Disqualification

Comment: A commenter expressed concern that the NPRM would revise current policy regarding the Department's review of guaranty agency Limitation, Suspension, and Termination (L, S, & T) actions to allow disqualifications based on a guaranty agency's termination to last indefinitely rather than the 18 months specified in current Department bulletins. The commenter believes that a guaranty agency should not be able to trigger indefinite disqualification of a lender or school from the FFEL programs. Accordingly, the commenter urged the Secretary to incorporate the current 18-month limitation in the final regulations.

Discussion: Sections 682.710 and 682.711 of the regulations allow a lender to request removal of a limitation 12 months after it is imposed and reinstatement of its eligibility 18 months after termination. However, section 432(h)(2)(C) of the Act specifies that the Secretary shall not lift a disqualification until the Secretary is satisfied that the lender has corrected the failures that led to the limitation, suspension, or termination action by the guaranty agency and there are assurances that, in the future, the lender will comply with all program requirements. Because the Secretary is required to apply qualitative standards in deciding whether to lift sanctions, he does not believe it is appropriate to impose a time limit such as the commenter suggests.

Changes: None.

Section 682.702 Effect on Participation

Section 682.702(c)

Comment: Many commenters suggested that the Secretary prohibit a lender that is subject to an L, S, & T proceeding from making a second or subsequent disbursement on a loan for which a guarantee commitment has been issued.

Discussion: The Secretary believes that it is important to provide a student who has received the first disbursement of a FFEL program loan access to subsequent disbursements of the loan. The Secretary believes that a loss of access for such a student will present serious obstacles to the student's completion of the program and will, as a result, precipitate a default.

Changes: None.

Section 682.704 Emergency Action

Section 682.704(c)

Comment: Many commenters suggested that the Secretary revise the date an emergency action becomes effective from the date the notification of the action is mailed to the lender to the date the lender actually receives the notification. The commenters believe that such a change is necessary to ensure that an emergency action does not become effective before the lender receives notification of that action.

Discussion: The Secretary does not agree. The Secretary believes that the date an emergency action against a lender becomes effective should be consistent with the date an emergency action taken against an institution becomes effective, which, pursuant to section 487(c)(1)(E) of the Act, is the date on which the notification is mailed. The regulations also specify that the notice must be sent by certified mail, return receipt requested.

Changes: None.

Section 682.705 Suspension Proceedings

Section 682.705(b)(2)

Comment: Many commenters suggested that the Secretary revise the date a lender's suspension becomes effective from the date the notification of the suspension is mailed to the lender to the date the lender receives the notification. The commenters believe that such a change is necessary to ensure that the suspension does not become effective before the lender receives the notification of the suspension.

Discussion: Unlike the emergency actions, which are intended to have immediate effect, suspensions do not take effect until after an opportunity is provided for a hearing. Therefore, the Secretary has revised the regulations to give a lender notice of an impending suspension.

Changes: A change has been made. The Secretary has revised the regulations to provide that a lender's suspension will become effective on a proposed date that is at least 20 days after the date the Secretary's notice is mailed to the lender.

Section 682.706 Limitation or Termination Proceedings

Section 682.706(c)

Comment: One commenter suggested that, in the event the lender's owner or an officer is convicted of, or pleads nolo contendere or guilty to, a crime involving FFEL program administration, the provision that a lender be subject to automatic termination is too severe a penalty to impose on a lender that is discovered to have one dishonest officer or employee. The commenter suggested that the discretionary authority afforded the Secretary in Section 682.712(c) should specify that an automatic termination under this section may be waived.

Discussion: The language in the regulations provides that such a criminal conviction is grounds for the Secretary to terminate a lender's eligibility. It does not, however, automatically terminate the lender's eligibility. The Secretary will make this determination on a case-by-case basis.

Changes: None.

Section 682.709 Reimbursements, Refunds, and Offsets

Comment: A number of commenters requested that the Secretary clarify the authority of a guaranty agency to require a school to repay FFEL funds owed to borrowers and lenders. The commenters stated that this authority should be explicitly spelled out in the regulations because guaranty agencies generally identify school error that results in liability or the repurchase of FFEL loans by the school.

Discussion: The Secretary agrees that this authority should be explicit in regulations and also believes that the agency's general enforcement authority should be clarified. However, he does not believe that these regulatory changes should be contained in Section 682.709.

Changes: Section 682.609 of the regulations has been revised to contain a new paragraph (e) that specifies that a guaranty agency may take an emergency action against a school or limit, suspend, or terminate the school's participation in the agency's loan guarantee program and may require the school to repay funds to another party or to purchase loans.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against Lenders

Section 682.712

Comment: One commenter recommended that if the Secretary upholds an agency's termination of a lender, the Secretary also should rely upon the agency's determination that the lender's failures have been corrected. The commenter suggested adding "guaranty agency" after "Disqualification by the Secretary."

Discussion: Section 432(h)(2)(B) of the Act requires the Secretary, before lifting any limitation, suspension, or termination sanction imposed on a lender, to make an independent determination that the lender has corrected the failures that led to the sanction. The Secretary notes, however, that nothing in the regulations prevents a guaranty agency from continuing a limitation or termination sanction even if the Secretary removes a national disqualification. The Secretary notes that the 1992 Amendments deleted the term "disqualification" as it was previously used to refer to the steps by which a guaranty agency's sanction against a lender or school received national effect. This change is a change in terminology and not in substance. However, the Secretary has not made that change to this regulation. The Secretary will issue new regulations to conform to the new statute at a later date.

Changes: None.

Sections 682.712 and 682.713

Comment: One commenter suggested that the Secretary revise the final regulations to provide for an evidentiary hearing by the Department for an institution or lender that has an L, S, or T action taken against it by a guaranty agency. The commenter argued that section 432(h)(2) and (3) of the Act provides that a lender or an institution that has an L, S, or T action taken against it by a guaranty agency is entitled to a trial-type evidentiary hearing.

Discussion: The Secretary does not agree with the commenter. The regulations do not preclude the use of an evidentiary hearing in a disqualification proceeding if the presiding officer determines that such a hearing is necessary. However, the Secretary believes that evidentiary proceedings in disqualification cases will be very rare. The only issues are whether the guaranty agency used the proper standards and procedures. Moreover, under the 1992 Amendments, the Department's review is limited to a review of the written record of the proceedings and the agency's procedures. Thus, the issues in a proceeding under Sections 682.712 and 682.713 should not present any questions requiring an evidentiary hearing.

Changes: A change has been made in Sections 682.712 and 682.713 of the regulations to delete references to a hearing on the record.

Section 682.800 Special Allowance Payments for Loans Financed by Proceeds of Tax-Exempt Obligations

Section 682.800(a)(2)

Comment: Several commenters recommended that the regulations be revised to clarify that an Authority whose Plan for Doing Business was subsequently approved by the Governor is eligible to receive special allowance on obligations issued before the November 16, 1986, date established by the 1986 Amendments.

Discussion: The Secretary agrees with the commenters that this section as currently written does not address special allowance payments for this category of loans.

Changes: A change has been made. The Secretary has revised Section 682.800(a)(2) to provide for special allowance payments on obligations issued before November 16, 1986 on the basis of a Plan approved by the Governor after that date.

Section 682.801 Provisions Required in Plan

Section 682.801(h)

Comment: A number of commenters felt that Section 682.801(h), which proposed to prohibit an Authority from issuing tax-exempt obligations in excess of the unmet need for student loan credit in its service area, should be deleted because it is not one of the criteria listed in section 438(d)(2) of the Act.

Discussion: The Secretary agrees with the commenters that a demonstration of the need for tax-exempt financing is not required as part of the Plan. In addition, the Department of Treasury regulations governing caps on tax-exempt financing prevent the excessive use of tax-exempt financing.

Changes: Section 682.801(h) has been deleted from the regulations. The Secretary has also deleted the corresponding provision in Section 682.802(g).

Sections 682.802 682.805

Comment: Several commenters recommended deleting these sections as the authority for the approval of the Plan for Doing Business was shifted to the Governor of the State in the 1986 Amendments. The commenters questioned the Secretary's authority to (1) regulate the required documentation submitted with the Plan; (2) enforce, suspend, or revoke a Plan that previously was approved by a Governor for the Authority's failure to comply with the Plan; or (3) impose sanctions for material misrepresentations.

Discussion: The Secretary believes that the fact that he does not directly approve the Plan does not prohibit him from enforcing program requirements. Clearly, in revising section 438(d) of the Act to provide the authority to the Governor to approve the Authority's Plan for Doing Business, Congress did not intend for the Secretary to permit non-compliance with the law.

Changes: None.

Section 682.830 Audit Standards

Section 682.830(a)

Comment: Some commenters felt the audit required by Section 682.830 should be limited to a financial audit and the requirement that the audit also should cover the Authority's compliance with its Plan for Doing Business should be deleted. The commenters believe that the guaranty agency's program review required under Section 682.410(c) addresses the issues normally covered by a compliance audit and that requiring an outside auditor to examine compliance is duplicative. Other commenters argued that if an Authority received a financial and compliance audit from an independent auditor, it should be exempted from review by the guaranty agency.

Discussion: The Secretary does not agree that a guaranty agency's review would duplicate the compliance audit required by Section 682.830. Guaranty agency reviews often focus on a single area, e.g., due diligence. The Secretary believes that the familiarity of guaranty agency officials with the FFEL programs provides for a more focused review than the compliance audit would require. Additionally, a determination of the Authority's compliance with its Plan for Doing Business generally is not covered by a guaranty agency program review. The Secretary believes, therefore, that exempting an Authority that has undergone an independent audit from a guaranty agency review would run counter to the best interests of the FFEL programs, even if the review and the audit overlap in some areas.

Changes: None.

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

Section 682.840(b)

Comment: Several commenters recommended the deletion of Section 682.840(b), which prohibits an Authority from receiving special allowance payments on loans guaranteed by an agency or organization that discriminates against borrowers. The commenters believe that an Authority should not be held responsible for the practices of another entity over which the Authority has no direct control. The commenters also noted that section 439(e) of the Act has a similar provision for the Student Loan Marketing Association ("Sallie Mae"), but that no similar provision jeopardizing the special allowance on loans held by Sallie Mae has ever been proposed. Some commenters said that this requirement unfairly penalizes an Authority in a State where the guaranty agency is prohibited by State law from guaranteeing loans to students attending a particular eligible institution.

Discussion: Under section 438(d)(3) of the Act, an Authority may not engage in any pattern or practice that results in a denial of a borrower's access to loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school. The Secretary considers an Authority "to have adopted a practice of denying access to loans" if it does business with an entity (e.g., a guaranty agency) that denies access to loans to eligible students in violation of similar restrictions on the guaranty agency contained in section 428(c)(2)(F) of the Act. Section 438(d)(3)

also requires the Secretary to deny special allowance payments to holders of loans that were made or purchased with funds obtained from the Authority if the Authority discriminates. Therefore, the Secretary believes his authority to withhold special allowance payments applies to the Authority and to any holder acting as trustee for the Authority. The Secretary also notes that the Department is specifically prohibited from regulating the activities of Sallie Mae. Nonetheless, Sallie Mae is required to comply with the requirements of section 439(e) of the Act.

Changes: None.

January 7, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan Program (FFELP), formerly the Guaranteed Student Loan (GSL) program (34 CFR part 682). The final regulations are needed to implement further the Secretary's Default Reduction Initiative. The effect of the regulatory change would be to require certain schools to establish one or more prescribed alternative closure plans that would offer relief to borrowers if the school terminates teaching activities in a particular program of study before students complete that program of study.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §682.600. The amendments to §682.600 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

See also "Compliance" under the supplementary information section.

SUPPLEMENTARY INFORMATION

Compliance

Each school currently participating in the FFEL program that is covered by these regulations must have a school closure plan in place no later than six months from the effective date of these regulations. A school that submits an application to participate in the FFEL program on or after the effective date of these regulations must submit its school closure plan with its application to participate in the FFEL program. A school that has an application pending to participate in the FFEL program on the effective date of these regulations must add the required school closure plan documentation to its application before the Secretary will approve it to participate in the FFEL program.

Background

On June 5, 1989, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (54 FR 24128) proposing, in part, a measure to ensure that students attending a private postsecondary school that closes have the opportunity to complete their program of study through a "teachout" arrangement. Based on the Department's review of the serious concerns about the teachout proposal raised by the commenters, the Secretary decided to issue a new NPRM that would require private postsecondary schools that offer an undergraduate nonbaccalaureate program designed to prepare students for a particular vocational, trade or career field to select and adopt one or more of several alternative approaches to deal with a potential school closing. This new NPRM was published in the **Federal Register** on September 5, 1991 (56 FR 43978). The second NPRM included a detailed discussion of the proposed changes to §682.600, and the discussion will not be repeated here.

The regulations are needed to put in place an element of the Secretary's Default Reduction Initiative for the FFEL program. The Default Reduction Initiative was prompted when FFELP default costs in fiscal year (FY) 1988 totalled almost $1.4 billion, representing a 200 percent increase in defaults during the previous five years and approximately 40 percent of the Department's FY 1988 expenditures for the FFEL program. The default program continues, with costs reaching $3.6 billion in FY 1991. The Secretary believes that a factor contributing to the high default rate is the large number of borrowers who are stranded by school closings. These borrowers are unable to gain employment due to an incomplete education but still owe a large FFELP debt that some feel no obligation to repay since the services paid for were not delivered. The effect of the regulatory change would be to require certain schools to establish one or more prescribed alternative closure plans that would offer relief to borrowers if the school terminates teaching activities in a particular program of study before students complete the program of study.

The most significant change to the proposed regulations is to limit the application of these regulations to schools with the greatest probability of closing. The Secretary's examination of data from FYs 1987 to 1990 reveals that private nonprofit institutions that qualify as institutions of higher education are overwhelmingly less likely to close than are proprietary postsecondary schools. The number of closed proprietary schools has increased sharply each year from 22 in FY 1987 to 187 in FY 1990 (the last full year for which data are available). During this four-year period, fewer than 1 percent (26 out of 2,641) of private nonprofit institutions that qualify as institutions of higher education participating in the FFEL program closed. By contrast, during the same period, 9.3 percent (36 out of 3,876) of participating proprietary schools closed. The majority of these school closures have not been end-of-the-term, orderly closures. During FY 1990, only seven private nonprofit institutions that qualify as institutions of higher education closed compared with 187 proprietary schools. The Department estimates the number of borrowers attending those 187 closed proprietary schools to be sixteen times greater than the number of borrowers attending the seven closed private nonprofit schools. Each year the cumulative rate has increased as the number of schools closures has increased at a faster rate than the number of participating schools; thus, based on this trend, when the FY 1991 data become available, we expect the FY 1987 through FY 1991 rate—especially for proprietary schools—to be substantially higher than the FY 1987 through FY 1990 rate. An examination of this data leads the Secretary to believe that private nonprofit postsecondary schools that qualify as institutions of higher education under 34 CFR 600.4 have a much smaller likelihood of mid-session closure than

proprietary postsecondary schools, so he has exempted such schools from the requirement to have a school closure plan.

Reauthorization of the Higher Education Act of 1965, as amended by Public Law 102-325, changed the definition of *pro rata* refund as used for the Title IV student aid programs. See section 484B of the HEA. The Department's general provisions regulations for the student financial aid programs will be amended to reflect this change in definition. Publication of the amended regulations will change the regulatory reference to *pro rata* refund in this regulation.

The purpose of these regulations is to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary educations are important elements of the President's AMERICA 2000 strategy to move the Nation toward achieving the National Education Goals.

The public comments received in response to the second NPRM have resulted in several changes in the regulations. A discussion of those changes follows.

Analysis of Comments and Changes

In response to the NPRM, 63 parties submitted comments on the proposed revision to §682.600 of the regulations. Substantive issues raised by the commenters are discussed below.

Section 682.600 Agreement between an eligible school and the Secretary for participation in the Federal Family Education Loan Program

Comments: The majority of commenters favored the Secretary's proposal to require a private postsecondary school participating in the FFEL program to establish a school closure plan under which the borrower and the Federal fiscal interest would be protected if the school terminates teaching activities in a particular program before the student completes that program. However, some commenters argued that certain categories of schools should be exempted from the requirement. The commenters argued that some private postsecondary schools, particularly hospital-based nursing schools that grant diplomas and are required by State law or State Boards of Registration to complete the training of any students who begin their programs, should be exempt from the requirement that they maintain a school closure plan. The commenters cited two examples of hospital-based nursing programs that fit this criterion: (1) One State requires schools offering those programs to make provisions to protect students in the event of school closure, and (2) another State requires that a school offering such a program graduate the last class that was admitted to its program so its graduates can sit for the State licensure exam.

Some commenters believed that the scope of institutions covered by the proposed regulations was too broad. Other commenters believed that the term "private," as used in the NPRM, was not clear. For example, a commenter from a major private university noted that his school was a "private" institution under the definition in the NPRM, but the likelihood of a program being terminated before completion of a student's program of study was nonexistent.

Discussion: The Secretary agrees with the commenters that if a certain type of private school very rarely closes, that type of school should not be required to have a school closure plan. The Secretary has examined historical data from the FY 1990 FFELP guarantee agency cumulative Tape Dump files and the records from the Department's Division of Audit and Program Review to determine the probability of certain types of schools closing. The data from FYs 1987-1990 reveal that the number of closed proprietary postsecondary schools has increased sharply each year from 22 in FY 1987 to 187 in FY 1990. The annual closure rate for this type of school increased from 0.7 percent in FY 1987 to 5.6 percent in FY 1990. On the other hand, few private nonprofit institutions that qualify as institutions of higher education have closed during this period and there is no trend toward an increase in the closure rate. For each of the four years in this period, the annual closure rate was well below 1 percent for this type of school. During FY 1990, there were approximately 26 proprietary school closings for every private nonprofit institution that qualifies as an institution of higher education that closed.

Based on this data, the Secretary has concluded that private nonprofit institutions that qualify as institutions of higher education are highly unlikely to close. Therefore, the Secretary has decided that a private postsecondary school that qualifies as an institution of higher education under 34 CFR 600.4 should be exempt from the requirement to have a school closure plan. Generally, a private, nonprofit school that provides (1) a degree program, (2) at least a two-year program acceptable for full credit toward a bachelor's degree, or (3) at least a one-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation, qualifies as an institution of higher education under 34 CFR 600.4. This category would include many hospital-based nursing programs that satisfy these requirements.

Changes: The Secretary has revised the proposed regulations to provide that a private nonprofit school that qualifies as an institution of higher education under 34 CFR 600.4 is exempt from the requirement to have a school closure plan.

Comments: Several commenters expressed concern that the NPRM mandated the creation of a school closure plan as a requirement for participation in the FFEL program. They argued that the Department should provide schools with sufficient time to develop school closure plans to submit to the Secretary before establishing the plan as a requirement.

Discussion: The Secretary agrees that schools currently participating in the FFEL program should have a reasonable period of time to develop and submit a school closure plan to the Secretary, the principal guarantee agency, and the appropriate accrediting commission. Therefore, the Secretary has decided to permit schools currently participating in the FFEL program to establish and submit school closure plans within six months from the date the regulations become effective. The Department will notify schools of the address that they should use to submit documentation concerning their plans to the Secretary and the deadline for submission. A school not currently participating in the FFEL program as of the effective date of these regulations must submit its school closure plan with its application to participate in the FFEL program. A school that has an application pending to participate in the FFEL

program at the time this regulatory requirement becomes effective must add the required school closure plan documentation to its application before the Secretary will approve it to participate in the FFEL program.

Changes: A change has been made in the date school closure plans must be established and submitted. The Department will permit a school currently participating in the FFEL program to submit a school closure plan to the Secretary, its principal guarantee agency, and its accrediting agency within six months of the date the regulations become effective.

Comments: One of the options for a school closure plan permits coverage under a State-administered tuition-recovery plan. Commenters from one State pointed out that when their State recovery plan is put in place in the near future, it will be State-approved, not State-administered. These commenters asked if this plan would satisfy the regulations.

Discussion: The Secretary believes that a State-administered plan would be audited by State auditors or subject to review by the State legislature and administrators, or both and would best meet his goals of ensuring the fiscal and administrative viability of the tuition recovery plan. However, the Secretary has concluded that a State-approved plan could provide these same protections in some cases. Therefore, a State-approved plan will be acceptable under the regulations if the plan is subject to State audit or review by the State legislature and administrators and is backed by the full faith and credit of the State.

Changes: The Secretary has revised the proposed regulations to provide that a State-approved tuition recovery plan will be an acceptable school closure plan if the plan is subject to State audit or review by the State legislature and administrators and is backed by the full faith and credit of the State.

Comments: Many commenters expressed concern that several existing State tuition-recovery plans do not permit refunds to be made to anyone but the student. State plans with this requirement would not qualify to be part of approved school closure plans under the proposed regulations.

Discussion: In the case of a school closure, the Secretary believes that, to prevent student loan defaults and protect the Federal fiscal interest, FFELP refunds must be paid to the lenders on behalf of the borrowers rather than to the borrowers directly. The proposed regulations are consistent with current Department regulations that require schools to pay FFELP refunds to lenders. See 34 CFR 668.22(e), 682.606 and 682.607. Therefore, the Secretary has retained the requirement that, to qualify as an approved part of a school closure plan, a tuition-recovery plan must pay refunds to the lenders.

Changes: None.

Comments: Many commenters expressed concern that the refund amounts paid under several existing State tuition-recovery plans might not refund an amount as large as the amount calculated under the definition of a *pro rata* refund in 34 CFR 682.606(c)(1) as required by the proposed regulations.

Discussion: The Secretary wishes to ensure that a refund made under this provision is equal to or greater than the amount calculated under 34 CFR 682.606(c)(1). Therefore, any State tuition-recovery plan that results in a refund equal to or greater than what would result if the refund were calculated in accordance with 34 CFR 682.606(c)(1) would satisfy the requirement of this provision of the regulations.

Changes: The language of the regulations has been clarified to provide that an acceptable school closure plan may include coverage under a State tuition-recovery plan that mandates a refund at least as large as a *pro rata* refund as defined in 34 CFR 682.606(c)(1).

To establish a consistent standard for refunds made as a result of any option selected as a school closure plan, the Secretary has also revised the language in 34 CFR 682.600(d)(2)(ii), (iii)(B), and (v) to reflect the same level of refund provided for in revised §682.600(d)(2)(i).

Comments: Many commenters indicated that the level of third-party financial guarantees that would be required to satisfy the school closure plan obligation was too high, would impose a financial burden on already overburdened schools, and might, in fact, trigger school closures.

Discussion: The Secretary is aware that some schools might have difficulty meeting the level of third-party financial guarantees required under the surety bond or letter of credit option. However, the Secretary believes that the requirement that the bond or letter of credit be in an amount equal to at least 50 percent of one academic year's tuition, fees, and other charges for all enrolled students on whose behalf a FFELP loan is made for the current period of enrollment is needed to protect the interests of the students and the Federal government. Moreover, since the third-party financial guarantee is only one of several options a school may select, the Secretary does not agree with the commenters that it is unduly onerous and should be modified.

Changes: None.

Comments: Many commenters stated that accrediting commissions might be prohibited legally from administering or sponsoring teachout or pooled-risk programs as proposed as part of the alternatives in the NPRM because of a possible conflict of interest that might exist in their administration of the funds.

Discussion: On the basis of interest expressed by accrediting bodies after the original NPRM was published on June 5, 1989, the Secretary included proposals in the revised NPRM that would allow a school to participate in a school closure plan administered by its accrediting agency. The Secretary understands that each accrediting agency will have to determine its legal authority to administer such a program. However, the Secretary has retained the option of accrediting-agency administration of a school closure plan for those agencies that are able to administer one.

Changes: None.

Comments: A number of commenters suggested that the regulations should require that any school closure plan offer the borrower the option of a *pro rata* refund or a teachout.

Discussion: While the Secretary supports the idea of borrower choice inherent in the commenter's proposal, comments on the original June 5, 1989 NPRM indicated that

not all schools are in a position to offer students the option of a teachout. Therefore, other options for school closure plans are being offered. However, the Secretary has determined that, in some circumstances, the Federal fiscal interest should be protected by requiring that a teachout must be the primary option. For example, the Secretary believes that in the case of a school closure plan administered by a school's accrediting commission, a teachout must be made available if possible. Only if teachout is not available under these plans must the *pro rata* refund be provided.

Changes: None.

Comments: Some commenters were concerned about the information that would need to be disclosed to a "competitor" for a school to arrange for a valid teachout agreement. Questions also were raised about the potential financial liabilities faced by the teachout school taking on the educational responsibilities of the closed school.

Discussion: The Department is not mandating specific information to be included in a teachout agreement. However, the teachout school must be an eligible institution that participates in the FFEL program and the agreement itself must comply with any other applicable laws and regulations.

In general, the Department will *not* require the teachout institution to assume the liabilities of the original school relating to the administration of the FFEL program. Moreover, the Department will not include in the calculation of the teachout school's cohort default rate any defaults that might occur on loans received by students to pay the costs at the school that closed. If, however, the students receive additional loans to cover the cost of attendance at the teachout school, any subsequent defaults will be included in the teachout school's cohort default rate.

Changes: None.

Comments: Several commenters stated that the provision for *pro rata* refunds as part of a school closure plan was inadequate and proposed that the Secretary require full refunds be paid to students in attendance at a school at the time it terminates full teaching activities.

Discussion: While the Secretary understands the argument that an incomplete vocational education is of questionable value, it is unlikely that a total refund would be available in most closure situations. Moreover, the Secretary believes that a *pro rata* refund is generally appropriate and that, in most cases, students received some benefit from the training. Nonetheless, the Secretary encourages States and accrediting agencies, when possible, to provide full refunds for students; such a plan would satisfy these regulations.

Changes: None.

Comments: Several commenters urged the Secretary to monitor compliance with these regulations.

Discussion: The Secretary agrees that it is necessary to have systematic, ongoing monitoring of compliance with these regulations once initial compliance has been established.

Changes: No change has been made to the regulations. However, the Secretary will revise current audit and institutional review guides to ensure that school compliance with this requirement is monitored systematically.

Comments: Some commenters were concerned about the requirement that teachout agreements would not be permitted between schools that have a business connection.

Discussion: The Secretary believes that a teachout arrangement between schools that share a business connection might not adequately protect student consumers. A teachout agreement with another school with which the original school has a business connection is generally of questionable value as the financial difficulties encountered by the original school also might affect the teachout school. However, the Secretary wishes to clarify that while a school may not enter into a teachout agreement with a school with whom it shares a business connection to comply with the regulations, such a school will not be prohibited from teaching out the students from the original school as part of an orderly, planned closing.

For example, some entities that own a group of "related" schools might elect to close one of the schools to continue to maintain the financial health and quality of the other schools in the group. The teachout agreement with a school with which the original school has no business connection must be in place and capable of being implemented should such a school close. However, should a "related" school elect to teach out students of the closing school, instead of the official teachout school, the Department would not prohibit such a teachout as it might be the least disruptive method for a student to complete his or her program of study.

Changes: None.

Comments: A few commenters objected to the proposal that schools selecting the teachout alternative must make the information public in their catalogs or brochures and their enrollment contracts.

Discussion: The Secretary believes that potential students should be informed of the school's plans to protect them in case of a school closure. Information regarding such an arrangement must be available in the school's catalog or its equivalent and the enrollment contract if one is used.

Changes: The Secretary has revised the regulations to allow a school to meet this requirement by briefly describing its teachout arrangement in its catalog (or equivalent) and its enrollment contract, if one is used. The description in the catalog (or equivalent), or enrollment contract, may summarize the arrangement, but a detailed description must be available to a student or potential student upon request.

PART 685—FEDERAL DIRECT STUDENT LOAN PROGRAM

(Authority: 20 U.S.C. 1087a et seq.)

Subpart A—Purpose and Scope

Sec. 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (Direct Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at postsecondary schools. This part governs the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program for the academic year beginning July 1, 1994. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford Loan Program, which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students. The borrower is responsible for the interest that accrues during any period.

(b) The Secretary makes a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct PLUS loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of education at the school.

(2) The Secretary has the authority to permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR part 600 and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loans under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan Programs. A parent of an eligible dependent student may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

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Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (Direct Loan Program)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal-State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Independent student
Parent
State
U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan (FISL) Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Totally and permanently disabled
Undergraduate student

(b) The following definitions also apply to this part:

Alternative originator: An entity that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not have an agreement with the Secretary to originate loans.

Direct Loan Program borrower: An individual to whom a Direct Loan is made.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Direct Loan Program school: A school that has an agreement with the Secretary under Sec. 685.300 to participate in the Direct Loan Program.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or by applying the proceeds to the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a Direct Loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the school on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the loan fee for the loan;

(4) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(5) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(7) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a period of enrollment, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97-376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96-342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants, and to the extent funding is available, campus-based aid the student would be expected to receive if the student has applied or will apply for that aid; and

(viii) In the case of a Federal Direct PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Federal Direct Stafford loan, Federal Pell grant, and campus-based aid that the student has been or will be awarded.

(ix) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior Federal or conventional student loan was received, the amount of loan proceeds withheld by the Secretary, lender, or guaranty agency making or insuring the loan if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Federal Direct PLUS loan amounts; and

(B) Private and State-sponsored loan program loan amounts; and

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Federal Direct PLUS Program: A loan program authorized by title IV, part D of the Act that provides loans to parents of undergraduate students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Unsubsidized Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program. The interest that accrues during all periods is paid by the borrower.

Grace period: The period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student enrolled in a school that is participating in the FFEL Program or the Direct Loan Program and is carrying an academic workload that amounts to at least one-half the workload of a full-time student as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Originating school: A school that has an agreement with the Secretary under Sec. 685.300(b) to originate loans in the Direct Loan Program. An originating school requests and obtains funds to originate Direct Loans using a draw down process similar to the process for drawing down funds for other federal student aid programs.

Period of enrollment: The period for which a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term (i.e., semester trimester, quarter, academic year, and length of the program of study), established by the school, for which institutional charges are generally assessed. The period of enrollment is also referred to as the loan period.

Repayment period: (1) For a Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan, the period beginning on the date following the expiration of the grace period and ending when the loan is paid-in-full, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct PLUS loan, the period that begins on the date the loan is fully disbursed and ends when

the loan is paid-in-full, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. The making of six consecutive voluntary on-time full monthly payments on a defaulted loan to regain further eligibility for Direct Loan Program loans. The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. On-time means a payment made within fifteen days of the scheduled due date and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.103 Applicability of subparts.

(a) Subpart A contains general information regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions that apply to borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements that apply to schools in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

Subpart B—Borrower Provisions

Sec. 685.200 Borrower eligibility.

(a)(1) Student borrower. A student is eligible to receive a Federal Direct Stafford Loan, or a Federal Direct Unsubsidized Stafford Loan, or a combination of such loans, if the student is enrolled in a Direct Loan Program school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford or Federal Direct Unsubsidized Stafford Loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii)(A) Reaffirms any FFEL Program or Direct Loan Program amount that previously was canceled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off.

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(2) Making a payment on the loan;

(iii)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial and gainful activity; and

(B) Signs a statement acknowledging that any Direct Loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(iv) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(v) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) Special conditions for Federal Direct Stafford Loan borrowers.

(i) A Federal Direct Stafford loan borrower must demonstrate financial need in accordance with title IV, part F of the act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(2) Provides subsistence support to its members.

(b) Parent borrower. A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirements of paragraphs (a)(1)(ii) and (a)(1)(iii) of this section; and

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(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history.

(ii) For purposes of paragraph (b)(7)(i) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(A) Is 90 or more days delinquent on any debt:

(B) Has been the subject of a default determination on any debt; or

(C) Has been the subject of a bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment or write-off of a Title IV debt during the five years preceding the date of the credit report.

(c) Use of loan proceeds to replace expected family contribution. A borrower may use the amount of a Federal Direct Unsubsidized Loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a loan period to replace the expected family contribution for that loan period.

(d) Defaulted FFEL Program borrower. In the case of a student, or parent, borrower who is currently in default on an FFEL Program loan, the borrower must make satisfactory repayment arrangements on the defaulted loan.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.201 Obtaining a loan.

(a) Application for a Federal Direct Stafford loan. To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit the student's loan origination record to the alternative originator, which will complete the origination of the loan.

(b) Application for a Federal Direct Unsubsidized loan. To obtain a Federal Direct Unsubsidized loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Unsubsidized Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit a student's loan origination record to the alternative originator, which will complete the origination of the loan.

(c) Application for a Federal Direct PLUS loan. To obtain a Federal Direct PLUS loan, the parent shall complete an application/promissory note and submit it to the school. After the school completes its portion of the application/promissory note, the school submits it to the Secretary. If the parent does not have an adverse credit history an originating school shall complete the origination of the loan. If the student for whom the loan is intended is attending a school that uses an alternative originator, the alternative originator will complete the origination of the loan.

(Authority: 20 U.S.C. 1087a et seq., 1091a)

Sec. 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) Interest—(1) Interest rate under the Federal Direct Stafford Loan Program and the Federal Direct Unsubsidized Stafford Loan Program. For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans, the interest rate, during any twelve month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed 8.25 percent.

(2) Interest rate under the Federal Direct PLUS Program. The interest rate on a Federal Direct PLUS loan, during any 12-month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed nine percent.

(b) Capitalization. (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the date the repayment period begins;

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct Unsubsidized Stafford Loan Program and the Federal Direct PLUS Program, the Secretary requires the borrower to pay on a monthly or quarterly basis, or may capitalize on a quarterly or less frequent basis, interest that has accrued during periods of deferment.

(4) For a borrower who is in a period of deferment, a mandatory forbearance, or the in-school or grace period on a Federal Direct Unsubsidized Stafford Loan and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) Loan Fee for Federal Direct Stafford, Federal Direct Unsubsidized Stafford, and Federal Direct PLUS loans. The Secretary—

(1) Charges a borrower a loan fee on a Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan of four percent of the principal amount of the loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) Late charge. (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within ten days after it is due.

(e)(1) Collection charges before default. Notwithstanding any provisions of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) Collection charges after default. If a borrower defaults on a Direct Loan Program loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a et seq., 1091a)

Sec. 685.203 Loan limits.

(a) Federal Direct Stafford Loan Program. (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for a program of study of at least a full academic year in length;

(ii) $1,750 for a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a dependent undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $3,500 for a program of study of at least a full academic year in length; or

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a dependent student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, or in the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) Federal Direct Unsubsidized Stafford Loan Program. In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Federal Direct Unsubsidized Stafford Loan Program or Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford Loan Program or Federal Stafford Loan Program.

(c) Additional eligibility under the Federal Direct Unsubsidized Stafford Loan Program. In addition to any amount borrowed under paragraph (b), an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Federal Direct Unsubsidized Loan Program. In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine and document in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, has an adverse credit history, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal PLUS loan or Federal Direct PLUS loan does not constitute an exceptional circumstance. The additional

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amount that such a student may borrow under the Federal Direct Unsubsidized Stafford Loan Program, in combination with Federal Unsubsidized Stafford loans, for any academic year of study is—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.2

(d) Federal Direct Stafford Loan Program and Federal Stafford Loan program aggregate limits. The aggregate unpaid principal amount of all Federal Direct Stafford Loans and loans received under the Federal Stafford Loan Program made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(e) Federal Direct PLUS Program annual limit. The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(f) Federal Direct PLUS Program aggregate limit. The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(g) Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan Program aggregate limits. The total unpaid principal amount of Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, Federal Stafford Loans and Federal Unsubsidized Stafford Loans may not exceed—

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

(h) Minimum loan interval. The annual loan limits applicable to a student shall apply to the length of the school's academic year as the term is used under the FFEL Program.

(i) Treatment of Federal Direct Consolidation loans and Federal Consolidation loans for purposes of determining loan limits. The percentage of the outstanding balance on a Federal Direct Consolidation loan or Federal Consolidation Loans counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Stafford and Federal Stafford loans; and

(2) For the Federal Direct Unsubsidized Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Unsubsidized Stafford Loan and Federal Unsubsidized Stafford loans.

(j) Maximum loan amounts. In no case may a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.204 Deferment.

(a)(1) A Federal Direct Stafford Loan borrower who meets the requirements described in subparagraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, and interest does not accrue.

(2) A Federal Direct Unsubsidized Stafford loan borrower or a Federal Direct PLUS borrower who meets the requirements described in paragraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, but interest does accrue and is capitalized or paid by the borrower.

(b) A Direct Loan Program borrower is eligible for a deferment during any period during which the borrower—

(1) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending.

(2) Is pursuing—

(i) A course of study pursuant to a graduate fellowship program approved by the Secretary; or

(ii) A rehabilitation training program, approved by the Secretary, for individuals with disabilities.

(3) Not in excess of three years is seeking and unable to find full-time employment; or

(4) Not in excess of three years has experienced or will experience an economic hardship.

(c) No borrower is eligible for a deferment, or a loan made under this part while serving in a medical internship or residency program.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.205 Forbearance.

(a)(1) A Direct Loan Program borrower or endorser may receive forbearance from the Secretary if the borrower or endorser is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower or endorser requests forbearance, and—

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under Sec. 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower under Sec. 685.200(a)(2).

(2) If payments of interest are forborne, they are capitalized.

(b) Mandatory forbearance. (1) Medical or dental interns or residents. Upon receipt of a written request and sufficient supporting documentation from a borrower serving in a medical or dental internship or residency program, the Secretary grants forbearance renewable at 12-month intervals to a borrower—

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) Borrowers and endorsers with high debt burdens. Upon receipt of a written request and sufficient supporting documentation from an endorser, or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (i)(1) of this section), the Secretary grants forbearance in increments of up to one year, for periods that, collectively, do not exceed three years, if the borrower or endorser—

(i) Is currently obligated to make payments on Title IV loans; and

(ii) The amount of such payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower or endorser's monthly disposable income.

(3) Borrowers and endorsers in National and Community Service. Upon receipt of a written request and sufficient supporting documentation from a borrower or endorser serving in a national service position for which the borrower or endorser receives a national service educational award under the National and Community Service Trust Act of 1993, the Secretary grants forbearance for the duration of the borrower's or endorser's term of service under that statute.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower of the student, including any Federal Consolidation loan or Federal Direct Consolidation loan used to discharge a Federal Stafford, Federal PLUS loan, Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in address during enrollment.

(c) Borrower defenses. A Direct Loan Program borrower may assert as a defense against the repayment of the loan a claim based on the act or omission of the school only if—

(1) The act or omission gives rise to a cause of action against the school recognized under the law of the State in which the school attended by the student was located;

(2) Prior to asserting the claim as a defense to repayment, the borrower presented that claim to the school and received no satisfaction; and

(3) The borrower presented the claim in writing to the Department within 18 months of the date the loan was disbursed to the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

Sec. 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a)(1) General. Participation of a school in the Direct Loan Program means that the school's students are eligible to receive Direct Loans. To participate in the Direct Loan Program, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) Program participation agreement. The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations including notices;

(ii) The Student Assistance General Provisions, 34 CFR part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR part 600.

(b)(1) In the participation agreement, the school shall agree to—

(i) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(ii) Estimate the need of each of these students as required by part F of the Act for an academic year, except that any loan obtained by a student under this part with the same terms as Federal Direct Unsubsidized Stafford Loans, or Federal Direct PLUS Loans, or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(iii) Provide a statement that certifies the eligibility of any student to receive a loan under part D of the Act is not in excess of the annual or aggregate limit applicable to the loan;

(iv) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act; and;

(v) Provide timely and accurate information to the Secretary for the servicing and collection of loans—

(A) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school and concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(B) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(2) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(3) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) Provide that students at the school and their parents will be eligible to participate in the program under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that a student or parent may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment.

(5) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(6) Provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act, or any benefits associated with such loan; and

(7) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) Origination. A school or consortium that originates loans in the Federal Direct Student Loan Program must have a supplemental agreement that—

(1) Provides that the institution or consortium will originate loans to eligible students and parents in accordance with part D of the Act; and

(2) Provide that the note or evidence of obligation on the loan is the property of the Secretary.

(Authority: 20 U.S.C. 1087a et seq., 1094)

Sec. 685.301 Certification by a Direct Loan Program school for a loan.

(a)(1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. Except as provided in 34 CFR part 668, subpart E,

a school may rely in good faith upon statements made on the application by the student.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with Sec. 685.200 and Sec. 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) A school may not certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in Sec. 685.203; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford Loan, the borrower's expected family contribution for that period.

(4) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with Sec. 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be at least 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

(i) Number of clock-hours in program ÷ 900 hours; or

(ii) Credit hours in program ÷ 24 semester or 36 quarter hours.

(5) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with Sec. 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be less than 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

Number of weeks in program ÷ 30 weeks.

(6) A school may refuse to certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, sex, color, religion, national origin, age, disability status, or income.

(7) A school may not assess a fee for the completion or certification of any Direct Loan Program loan forms or information.

(b) Disbursing a loan. (1) Before disbursing a loan, a school must determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) A school shall establish disbursement dates for any Direct Loan Program loan as follows:

(i) Disbursements must be in two or more installments;

(ii) No installment may exceed one-half the loan; and

(iii) At least one-half of the loan period must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(c) Promissory note. (1) The Secretary provides promissory notes for use in the Direct Loan Program and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall provide to the Secretary an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.302 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.303 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) Purpose. This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) General. (1) A school may not disburse any loan proceeds unless the school or the alternative originator has obtained an executed legally enforceable promissory note from the borrower.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of Sec. 685.200 from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs or the Direct Loan Program, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(3) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(4) A school may not deliver loan proceeds to a student borrower earlier than ten days before the first day of the period of enrollment.

(5) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school, within 30 days of the period described in Sec. 685.304(b), shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(6) A school may not apply the first disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to the account of a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan until 30 days after the first day of the student's program of study.

(c) Processing of the proceeds of a Direct Loan Program loan. (1) After the student has registered, the school shall—

(i) Not more than three weeks prior to the first day of the period of enrollment—

(A) Credit the amount of the loan proceeds to the student's account;

(B) Notify the student or parent borrower in writing that it has so credited that account; and

(C) Deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (b)(5) of this section, not later than 45 days after the disbursement of the funds.

(ii) Subject to paragraph (b)(5) of this section, disburse the loan proceeds to the borrower.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in Sec. 685.304(c).

(d) Late disbursement. (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the loan period; or

(ii) Before the end of the loan period, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if the school or the alternative originator has received a completed promissory note prior to the 30th day after the applicable condition in paragraph (d)(1) of this section.

(3) Notwithstanding paragraph (d)(2) of this section, a school may not make—

(i) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(ii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(e) Initial counseling. (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct Unsubsidized Stafford borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan made to a borrower who has not received a Federal Stafford loan for attendance at the school and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports, garnishment of wages, and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(f) Exit counseling. (1) A school shall conduct in-person exit counseling with each Federal Direct Stafford, or Federal Direct Unsubsidized Stafford borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of students who have obtained Federal Direct Stafford or Federal Direct Unsubsidized Stafford loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., standard repayment plan, extended repayment plan, graduated repayment plan, income contingent repayment plan, loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (e)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain cancellation of a loan;

(vii) Require the borrower to provide corrections to the institutions's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that must be provided within 60 days to the Secretary.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (e) and (f) of this section as to that borrower.

(g) Treatment of excess loan proceeds. Before the delivery of any Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct Unsubsidized Stafford, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.304 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under Sec. 685.305.

(b) The withdrawal date. (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) Forty-five days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) Twenty-five days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under Sec. 685.302. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)-(b)(3) of this section.

(c) Leaves of absence. A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.305 Payment of a refund to the Secretary.

(a) General. By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) Allocation of refund. In determining the portion of a student's refund for an academic period that is allocable to a Direct Loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR Part 668 for allocating a refund that is payable.

(c) Timely payment. A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under Sec. 685.304(b)(1)-(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under Sec. 685.304(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.306 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may submit a written request to the Secretary to withdraw from participation in the Direct Loan Program explaining why it seeks to withdraw.

(b) The Secretary reviews the school's request to determine if the school has the ability to administer the Direct Loan Program properly and notifies the school of his decision to approve or disapprove the request within 30 days of receiving the school's request.

(c) In reviewing a school's request, the Secretary considers whether the reasons for the request apply only to participation in the Direct Loan Program or to participation in either the Direct Loan Program or the FFEL Program.

(d) If a school's request is approved by the Secretary, the withdrawal becomes effective on the first of July following the school's request.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.307 Remedial actions.

(a) General. The Secretary requires a school to purchase that portion of a Direct Loan that is unenforceable, or that the borrower was ineligible to receive. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in Sec. 685.300.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) General. Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) Student status confirmation reports. A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) Record retention requirements. Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions;

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) Loan record requirements. In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with Sec. 685.102;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan under Sec. 685.200, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(i) The date the school received a completed promissory note from the borrower; and

(ii) The date of each disbursement of the loan.

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) Inspection requirements. Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department of Education Office of Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any information deemed relevant by the Secretary;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) Information sharing. (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan has changed his or her permanent address, the school shall notify the Secretary within 30 days thereafter.

(g)(1) Accounting requirements. A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending Direct Loan Program funds in accordance with generally accepted accounting principles.

(h)(1) Direct Loan Program bank account. The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for Direct Loan Program funds. The school shall notify the bank where the Direct Loan Program account is located in writing that the Direct Loan Program account contains Federal funds. In addition, the school must provide that the word "Federal" is in the name of the school's Direct Loan Program account. If the school's accounting system and practices meet the requirements of paragraph (g) of this section, the school's Direct Loan Program account need not be a separate bank account. The Secretary reserves the right to require a school to maintain a separate account for the Direct Loan Program.

(2) Any interest earned on Direct Loan Program funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) A school shall divide the functions of authorizing payments and disbursing funds to borrowers so that no single office has responsibility for both functions under the Direct Loan Program.

(j) Funds received by a school under this part may be used only to make Direct Loan Program loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(k) The Secretary may take any action that he deems appropriate to protect the Federal fiscal interest, including such actions as requiring that a school that originates Direct Loans use an alternative originator instead.

(Authority: 20 U.S.C. 1087a et seq.)

Appendix A to Part 685.—New Loan Maximums as of July 1, 1994

Direct Loan Program and FFEL Program		
Academic level	Sub./Unsubsidized Federal Stafford loans	Additional unsubsidized eligibility
1Annual Limits First Year Student:		
Full academic year	$2,625	$4,000
2/3 academic year	1,750	2,500
1/3 academic year	875	1,500

Appendix A to Part 685.—New Loan Maximums as of July 1, 1994—Continued

Direct Loan Program and FFEL Program		
Academic level	Sub./Unsubsidized Federal Stafford loans	Additional unsubsidized eligibility
Second Year Student		
Full academic year	3,500	4,000
⅔ academic year	(1)	2,500
⅓ academic year	(1)	1,500
Third Year Student and Beyond:		
Full academic year	5,500	5,000
Less than academic year	Prorated	Prorated
Graduate or Professional Student	8,500	10,000

Aggregate Limits:	
Undergraduate	$46,000
Graduate	138,500

[1] Prorated for less than academic year.

Notes: For independent students or dependent students whose parents cannot borrow under the PLUS program, the amount a student can borrow under the unsubsidized loan program during any academic year is: (A) the Stafford loan limits *plus*; (B) first 2 years $4,000 per year; (C) remainder of undergraduate program $5,000 per year; (D) Graduate $10,000 per year.

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Analysis of Comments and Changes

July 2, 1993 Federal Register Supplementary Information and Analysis of Comments and Changes

SUMMARY: The Secretary adds a new part 685 to title 34 of the Code of Federal Regulations containing regulations for the Federal Direct Loan Demonstration Program, hereinafter referred to as the Federal Direct Student Loan Program (FDSLP).

These regulations are being published under unusual circumstances. The statute that authorizes the FDSLP requires that final regulations for the demonstration program be published by July 1, 1993. However, the President has proposed significant changes to the governing legislation as part of the Student Loan Reform Act of 1993. If the Student Loan Reform Act is enacted in whole or in part, the scope of the FDSLP and the terms and conditions for borrowers and schools participating in the FDSLP would be altered significantly. At this time, passage of the Student Loan Reform Act in some form seems likely. The Student Loan Reform Act would require the Secretary to promulgate rules necessary for the administration of the FDSLP that would in large part supersede these regulations.

These final regulations govern the Federal Direct Stafford Loan Program, the Federal Direct Supplemental Loans for Students Program, and the Federal Direct PLUS Program, collectively referred to as the Federal Direct Student Loan Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of Sec. 685.200. Section 685.200 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The reauthorization of the HEA established the FDSLP, a program designed to test the effectiveness of a direct student loan program in comparison to the Federal Family Education Loan (FFEL) Program, formerly known as the Guaranteed Student Loan Programs. In the FFEL Program, the Secretary works with private lenders and guaranty agencies to provide loans to students and parents of students attending postsecondary schools. In the FDSLP, the Federal government provides loan capital, schools originate loans on behalf of the Secretary, and the Secretary performs functions necessary in the FDSLP that in the FFEL Program are performed by private lenders and guaranty agencies. These functions will be performed primarily by contractors under the Secretary's direction. Loans will be made under the FDSLP for the period beginning July 1, 1994 and ending June 30, 1998.

The Department of Education (ED) and the General Accounting Office (GAO) will analyze and evaluate the FDSLP and compare this demonstration program to the FFEL Program. During the demonstration period, GAO is required to recommend to Congress whether to modify, continue, expand, or terminate the loan demonstration program and whether to replace all or some of the FFEL Program.

On April 2, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 17472). However, on May 5, 1993, the President sent a legislative proposal to Congress, the Student Loan Reform Act of 1993, that would expand the scope of the FDSLP to fully replace the guaranteed loan programs by the beginning of the 1997–1998 academic year. The primary objective of this proposed legislation is to revamp the student loan system to better serve students. A new streamlined system would simplify the administrative tasks of educational institutions, make the system easier to understand, provide students with greater choice in repayment plans, and lower costs to taxpayers and borrowers.

Under the Student Loan Reform Act, borrowers would continue to be assured of access to loan funds. As in the demonstration program, direct loan capital would not be limited by congressional appropriations. Funds would flow promptly to schools solely on the basis of borrower eligibility and needs. Once the system is fully implemented, a portion of the general cost savings from direct lending would be passed on to borrowers in the form of a reduction in the interest rate on their loans.

The Student Loan Reform Act would phase in a full-scale direct lending program over 4 years, beginning in academic year 1994–95. The goal is to begin with 4 percent of new loan volume in direct lending in the first year, 25 percent the second year, 60 percent the third year, and full implementation in academic year 1997–98. In addition, the proposed legislation removes the requirement that the Secretary select schools to be in a control group for purposes of comparing direct lending to the FFEL Program.

Some key provisions of the Student Loan Reform Act that would impact on schools and borrowers include—

- Criteria for measuring the financial and administrative capability of schools to originate loans that would be used to determine which schools may originate loans;

- The availability of alternative originators for schools that do not originate loans;

- A fee to help cover some of the costs of loan origination for schools that originate;

- The availability of a range of flexible repayment options to suit borrowers' varied financial circumstances, including options for those borrowers who choose to take low-paying community service jobs; and

- A consolidation option for borrowers, without regard to the total amount of the outstanding balance.

If the Student Loan Reform Act is enacted, the current demonstration program would become phase one of the full-scale program, with the same anticipated loan volume. If enacted, the provisions of the Student Loan Reform Act would take precedence over many of the provisions of these regulations. Because of the short timeframe between the anticipated enactment of the Student Loan Reform Act and the FDSLP startup, the proposed legislation allows the Secretary to publish a notice in the **Federal Register** specifying whatever standards, criteria, and procedures, consistent with the statute, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the FDSLP. This notice would incorporate the provisions of these final regulations except where the statute requires a change or addition. The second and subsequent years of the FDSLP will be regulated under the normal regulatory process (i.e., NPRM, public comments, final regulations).

The Secretary received many comments regarding the proposed legislation as well as the NPRM. Comments concerning the proposed legislation are not addressed in these final regulations.

Certain technical amendments to the HEA also have been drafted, including the incorporation of unsubsidized Federal Direct Stafford loans into the FDSLP. At the time these final regulations were prepared, technical amendments had not been enacted. In addition, many provisions in these final regulations are based on similar provisions in the FFEL Program regulations. The FFEL Program regulations are being revised under a negotiated rulemaking process. Where appropriate, the FDSLP regulations will also be amended in the future to incorporate changes made in the FFEL Program regulations as a result of the negotiations, or to reflect any technical amendments enacted.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 230 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Because the FDSLP is a demonstration program and will be evaluated and compared to the FFEL Program, proposed changes to provisions in the NPRM that are identical to provisions in the FFEL Program regulations have not been accepted.

Funds Disbursement

Comment: A number of commenters expressed confusion about how a school would draw down funds from ED. Other commenters said the limitation on the amount a school could draw down (i.e., the amount a school would need to fund loans it planned to disburse within a 3-day period), was too short. Some commenters asked how students' funding needs would be met if the amount a school needed to fund those students exceeded its authorization level.

Discussion: Schools will be authorized to draw down funds for making FDSLP loans using the same process currently used to draw down money for the Federal Pell Grant Program and the Federal campus-based programs, i.e., the Department of Education's Payment Management System (EDPMS). EDPMS handles payments to schools for those student aid programs for which the school serves as the disbursing agent to the student. The role of EDPMS is to serve as the school's single point of contact in the Department for cash matters. EDPMS manages cash advances to schools, expedites the flow of cash between the Federal government and schools, and transmits data back to the appropriate program office (i.e., FDSLP).

For the FDSLP, funds will be transferred using the Automated Clearing House/Electronic Funds Transfer method (ACH/EFT). This method provides paperless payment processing. A FDSLP school will transmit an electronic payment request using the school-based software provided by the Secretary, or will telephone its payment request, to the central service bureau, (currently National Computer Systems (NCS)). After ensuring that the request is valid, the central service bureau will forward the request to EDPMS. Each request will be transmitted to the Federal Reserve Bank,

which will deposit funds electronically into the school's FDSLP bank. Funds will be received within 3 working days of the school's request. For example, a request made by 2 p.m. E.S.T. (eastern standard time) on Monday will generally be deposited on Wednesday to the school's account. However, a school should always verify that the deposit has been made.

The payment request transmitted by the school must be adequate to meet the school's FDSLP disbursement needs. As in other Federal student aid programs, a payment request may not exceed "immediate need," which is defined as 3 days in advance of disbursement to the student. If the amount of funds drawn down is insufficient to meet its FDSLP loan funding needs, a school would simply transmit another payment request.

The FDSLP is a school entitlement program. The amount of funds a school can draw down from EDPMS is limited only by the eligibility of its student and parent borrowers. There is no "school authorization level" as in the other Federal student aid programs. The FDSLP will, however, use internal controls to monitor school drawdown requests in order to prevent and detect errors and potential fraud and abuse.

Changes: None.

Section 685.100 The Federal Direct Student Loan Program

Section 685.100(a)

Comment: A number of commenters noted that no equivalent to the unsubsidized Federal Stafford loan was included in the FDSLP. The commenters stated that the absence of an unsubsidized Federal Direct Stafford would put students attending a FDSLP school at a distinct financial disadvantage compared to students attending a school participating in the FFEL Program where they would have access to an unsubsidized Federal Stafford loan.

Discussion: The Secretary agrees with the commenters that if an unsubsidized Federal Direct Stafford loan is not available, students attending a FDSLP would be at a disadvantage. However, until the HEA is amended to allow unsubsidized Federal Direct Stafford loans to be made in the FDSLP, unsubsidized Federal Direct Stafford loans cannot be referenced in the regulation. The Secretary has been assured that the exclusion of the unsubsidized program was a legislative oversight that will be remedied shortly. Treatment of unsubsidized Federal Direct Stafford loans in the FDSLP will parallel the treatment of unsubsidized Federal Stafford loans in the FFEL Program.

Changes: None.

Section 685.102 Definitions

Co-maker

Comments: None.

Discussion: The statute does not use the term co-maker in discussing the provisions that apply to the Federal PLUS program. A co-maker is one of two individuals who is a joint borrower on a Federal PLUS loan and who is jointly and severally liable for repayment of the loan. In the Federal PLUS program, there are generally two eligible borrowers for each loan, i.e., two parents who may borrow on behalf of an eligible student. Thus, it has been the Secretary's longstanding interpretation that both parents could obtain a loan for a single student as co-makers. However, both co-makers must also qualify in order to obtain the other benefits available to borrowers under the program, e.g., deferments, forbearances, and cancellations. The Secretary has left it to the discretion of each guaranty agency in the FFEL Program to decide if co-makers will be used in their program. In recognition that the circumstances that might make a PLUS loan borrower eligible for these benefits generally financially impacts the family and not just the individual, the Secretary has decided that the second signatory on a PLUS loan promissory note will be an endorser and not a co-maker. An endorser is defined as an individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Changes: The term "co-maker" has been deleted from the final regulations.

Loan Period

Comment: A number of commenters stated that the definition of "Loan Period" was incomplete and should be expanded to specify what the minimum loan period should be.

Discussion: The minimum period of enrollment for which a loan may be made must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Charges: The definition of loan period has been amended to clarify that the loan period must be at least an academic term.

School

Comment: Several commenters stated that the definition of "school" should include the discussion that is in the FFEL Program regulations that clarifies that a borrower may receive an in-school deferment based on attendance at an eligible school, regardless of whether that school is participating in a title IV program. The commenters believed that failure to include such a discussion would not allow borrowers with both FFEL Program and FDSLP loans to defer their loans concurrently.

Discussion: The definition of "school" found in Sec. 685.102 is the definition of those schools that are eligible to participate in the FDSLP. The regulations for the FDSLP in Sec. 685.305 cross reference the FFEL Program regulations (34 CFR 682.210) for purposes of determining deferment eligibility. The FFEL Program regulations specify that a borrower is entitled to a deferment while enrolled in a school defined in §682.200. Accordingly, the deferment eligibility is the same for both programs.

Changes: None.

Section 685.200 Application Instructions for Schools to Participate in the FDSLP or the Control Group

Comment: Many commenters asked how schools would apply for participation in the FDSLP or the control group.

Discussion: The Secretary has developed an application for schools to use to apply to participate in the FDSLP or the control group. A draft of the application is included in these regulations as Appendix B; the Secretary will submit this application form for review under the Paperwork Reduction Act. A school must complete the approved application and submit it to the Secretary by October 1, 1992. Applications postmarked after October 1, 1993 will not be accepted. A school may use a single application to apply for participation in the FDSLP or the control group. The selection for schools to participate in the FDSLP will be conducted first.

Changes: The final regulations have been amended to specify the procedures a school must follow to apply for participation in the FDSLP or the control group. An application schools can use to apply has been provided as Appendix B.

Comment: Several commenters asked how a group of schools could apply as a consortium.

Discussion: Each school included as part of a consortium of schools must furnish the information requested in the application. The application has been designed so that schools wishing to apply as a consortium can do so. A school that is applying as part of a consortium may not also apply individually.

Changes: None.

Section 685.201 Requirements for Schools to Participate in the FDSLP

Comment: Several commenters asked how a consortium would operate in the FDSLP.

Discussion: A consortium of schools in the FDSLP would interact with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools in the consortia would be consolidated and funneled through a single point. This point may be a school or even a third party under a contractual arrangement with the consortium. Each school in the consortium will be required to sign the FDSLP participation agreement with the Secretary and be responsible for the information supplied through the consortium.

Changes: None.

Comment: Some commenters opposed the requirement that a school have certain computer equipment and participate electronically in the FDSLP. These commenters believed that the requirement would prevent a comparison between the FDSLP and the FFEL Program because guaranty agencies do not have similar requirements. Some commenters believed that guaranty agencies were prohibited from having similar requirements. Many commenters believed that the computer requirements were reasonable and that requiring electronic communication was a forward step in decreasing the paperwork that is endemic in the financial aid process.

Discussion: The HEA requires that loans made under the FDSLP must have the same terms and conditions as FFEL Program loans. This does not require that the FDSLP operate in the same way as the FFEL Program. By definition, schools will have a different relationship with the Secretary under the FDSLP than they do with guaranty agencies and lenders in the FFEL Program. Guaranty agencies are not prohibited from instituting similar requirements for schools participating in their programs. The Secretary plans to make maximum use of current technology. This technology will allow schools participating in the FDSLP to communicate with the Secretary quickly and efficiently and will reduce the paperwork that has come to be associated with student loans.

Changes: The computer configuration specified in the NPRM as a requirement to participate has been removed from the section in the final regulations that lists the requirements for schools to participate in the FDSLP. However, the requirement that a school in the FDSLP use the software or specifications provided by the Secretary is still included in the participation agreement a school will sign with the Secretary to participate in the FDSLP. The minimum computer configuration a school must have to use the software or specifications provided by the Secretary is an IBM-compatible personal computer (PC), 512K RAM, DOS version 3.3 or later, 4 MB space available on a hard disk, a floppy drive, and a 1200, 2400 or 9600 baud Hayes compatible asyncronous modem; or a mainframe computer supporting IBM 3780 RJE protocol and HASP using binary synchronous communications at 2400 and 4800 bits/second; and, a printer that prints on 8½ by 11 inch paper. Of course, depending upon the volume of loans for a particular school, additional capacity may be needed. The hardware needed to participate in the FDSLP is quite modest and is already resident at most schools.

Comment: A number of commenters asked if there would be technical assistance and training for schools and, if so, would there be a charge.

Discussion: The Secretary will provide technical assistance and training to schools in the FDSLP. The Secretary will not charge schools for this service.

Changes: None.

Comment: Several commenters asked if the Secretary would provide data layouts and specifications to schools that use mainframe or minicomputers. If so, would there be a charge?

Discussion: The Secretary will provide data layouts and specifications at no charge to the school.

Changes: None.

Comment: Many commenters opposed the requirement that the school have a cohort default rate that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been calculated. Some commenters noted that a guaranty agency is prohibited from denying participation to an eligible school in the guaranty agency's program based solely on default rate of the school. Other commenters believed that the 25 percent threshold was too high and for a demonstration program, and participation should be limited to schools with demonstrated success with the FFEL Program.

Discussion: Because the FDSLP is a demonstration program that is only authorized for a 4-year period, the Secretary has decided not to apply the cohort default rate provisions applicable to the FFEL Program to schools selected to participate in the FDSLP. The Secretary is

interested in permitting some schools with relatively high default rates to participate in the demonstration program. However, the Secretary does not believe it would be in the Federal fiscal interest to allow a school to participate in the FDSLP if there is a high probability that the school's participation in the FFEL Program would be terminated because of the school's high default rates if the school remained in the FFEL Program. Therefore, the final regulations retain the 25-percent cut-off for initial selection into the FDSLP.

Changes: None.

Section 685.202 Selection Process for Schools in the FDSLP

Comment: A number of commenters believed that the process the Secretary will use to determine which schools will participate in the FDSLP or the control group should be defined in greater detail. Many commenters asked how the Secretary will ensure that the limitations regarding guaranty agency volume are met. A number of commenters, noting the political pressures involved in determining which schools will participate, suggested that a third-party contractor be used for the selection process.

Discussion: The Secretary will ensure that the process used to select participants in the FDSLP and the control group will comply with the statutory requirements. The Secretary has obtained the services of a third-party contractor to assist in developing the selection process.

Changes: None.

Section 685.203 Selection Process for Schools in the Control Group

Comment: A number of commenters asked what specific activities would be required of schools in the control group.

Discussion: The Secretary and the GAO will conduct a comprehensive evaluation of the FDSLP and compare this demonstration program to the FFEL Program. A control group will be selected to provide a standard against which the FDSLP can be compared. Schools in the control group will continue to be required to follow the FFEL Program regulations. These final regulations do not impose any additional requirements on schools in the control group.

Changes: None.

Section 685.204 Appeal Procedure for Schools Selected to Participate in the FDSLP or the Control Group

Comment: Many commenters believed that the 15-day period during which a school could appeal its selection to participate in the FDSLP or the control group was too short.

Discussion: In enacting the FDSLP, Congress included the implementation schedule in the legislation. The statutory deadline for submitting applications to participate is October 1, 1993. If a school successfully appeals its selection, then the Secretary must select another school that also will have an opportunity to appeal. In addition, many schools have indicated that they will need to know if they will participate in the FDSLP prior to the January 1, 1994 deadline for the Secretary to publish the final list of participants in the FDSLP and the control group. Because of the statutory deadlines, the 15-day deadline for appeals has been retained. However, a school's appeal submitted after the deadline may be accepted if the school can demonstrate extenuating circumstances that prevented the appeal from being made by the deadline date.

Changes: None.

Section 685.301 Obtaining and Repaying a Loan

Section 685.301(a)(1)

Comment: Many commenters asked how a school will determine what interest rate to charge a Federal Direct Stafford borrower.

Discussion: If a Federal Direct Stafford loan borrower has a prior fixed-rate Federal Stafford or Federal Direct Stafford Loan, the borrower will receive the same interest rate on a subsequent Federal Direct Stafford loan. Once the National Student Loan Data System (NSLDS) is operational, the interest rate will be determined when the borrower's need analysis application is processed through the Central Processing System. Until then, schools may rely upon the interest rate reported by the student on the Free Application for Federal Student Aid (FAFSA). In either case, the rate will be forwarded to the school on the student's Student Aid Report (SAR) or Electronic Student Aid Report (ESAR).

If the student does not have a prior fixed-rate Stafford loan, the student's interest rate will be a variable rate. The variable rate is published annually in the **Federal Register** and will be provided to schools. More detailed guidance will be provided in the policy and procedures manual that will be given to FDSLP schools.

Changes: None.

Comment: Several commenters asked what would be the school's responsibility if it had information regarding a borrower's interest rate that conflicted with the information on the SAR or ESAR.

Discussion: Consistent with 34 CFR part 668, subpart E, a school would be responsible for resolving conflicting information before a FDSLP loan could be made.

Changes: None.

Section 685.301(a)(3)

Comment: Many commenters asked for more specific details about how the process for Federal Direct PLUS loans would work. Many other commenters asked who would be responsible for doing the credit check required for Federal Direct PLUS loans.

Discussion: Federal Direct PLUS loans will be made through a process similar to the one used in the FFEL Program that starts with the parent filling out a combined application/promissory note and sending it to the school. The school will forward this application to the Secretary where the data will be key entered and a credit check performed. Alternatively, a school may enter the data using the software provided by the Secretary, and electronically forward this information to the Secretary. In either case, the Secretary will perform the credit check and notify the school of the results.

The school may then draw down money and disburse the loan funds in the same manner as Federal Direct Stafford and SLS loans.

Changes: The final regulations have been amended to reflect the origination process for a Federal Direct PLUS loan.

Section 685.302 Charges for Which FDSLP Borrowers are Responsible

Section 685.302(a)(1)(vi) and (vii)

Comment: One commenter noted that the provision for interest rebates for loans with an interest rate of 10 percent where the sum of the 91-day Treasury bill rate plus 3.25 percent is less than 10 percent should not be included in the FDSLP regulations.

Discussion: The Secretary agrees with the commenter.

Changes: Sections 685.302(a)(1)(vi)–(vii) have been deleted from the final regulations.

Section 685.302(b)–(e)

Comment: Many commenters believed that the Secretary would be charging a FDSLP borrower more than if the borrower were receiving a loan in the FFEL Program. They pointed out that while a borrower is in deferment, many lenders capitalize interest annually rather than quarterly, that the insurance premium is frequently less than 3 percent, and that late charges and collection charges before default are often waived or reduced.

Discussion: The proposed regulations reflected the extent of the Secretary's legal authority to assess certain charges. This authority is also reflected in these final regulations. The actual charges (not to exceed the authorized maximum) will be reflected in the promissory note and other program materials. The Secretary anticipates capitalizing interest annually during deferment periods, charging a loan fee of 6.5 percent, and assessing late charges and collection costs before default in limited circumstances.

Changes: The final regulations have been amended to clarify the Secretary's flexibility in assessing certain charges, including late charges and collection charges before default, and in the frequency of capitalization of interest. The final regulations have also been amended to provide for a single loan fee that is equal to the origination fee plus the insurance premium. The new combined loan fee will not exceed the maximum amount allowed for an origination fee plus insurance premium in the FFEL Program.

Section 685.304 Repayment of a Loan

Comment: Many commenters asked if the Internal Revenue Service (IRS) would be collecting FDSLP loans through payroll deduction. Other commenters said that the specific collection procedures that will be used in the collection of FDSLP loans should be included in the regulations.

Discussion: For the demonstration program, the Secretary does not anticipate that the IRS will be involved in the actual loan collection process through payroll deductions. The Secretary will contract for servicing and collection of FDSLP loans. Procedures to be followed by the contractor in the servicing and collection of FDSLP loans will be specified by the Secretary as part of the contractual agreement. However, it is the Secretary's intent to require FDSLP contractors, at a minimum, to follow the servicing and collection procedures in the FFEL Program regulations.

Changes: None.

Section 685.305 Deferment

Section 685.305

Comment: Several commenters asked what a school's responsibilities would be regarding deferments.

Discussion: A school's responsibility regarding deferments will be the same in the FDSLP as it is in the FFEL Program, i.e., to certify the enrollment status of a student who requests an in-school deferment.

Changes: None.

Section 685.306 Forbearance

Section 685.306(a)(1)

Comment: A few of the commenters were concerned that the NPRM did not authorize an endorser to a FDSLP loan to request a forbearance.

Discussion: In the FFEL Program regulations, an endorser is authorized to request forbearance for a FFEL Program loan. A similar provision did not appear in the NPRM.

Changes: The final regulations have been revised to allow an endorser to request forbearance on a FDSLP loan.

Section 685.400 Agreement Between an Eligible School and the Secretary for Participation in the FDSLP

Section 685.400(b)(3)

Comment: Many commenters asked how long schools would have to forward promissory notes to the Secretary and be considered to have done so in a "timely" manner.

Discussion: The timing requirement for sending promissory notes to the Secretary will be determined by the reconciliation process, by which the school will reconcile drawdowns, disbursements, and cash on hand with the Secretary. A school must reconcile with the Secretary once each month for the previous month's activity. Schools will be assigned a monthly reconciliation period that ends at the same time each month. For example, if a school's reconciliation period ends on September 15th, the school would have to reconcile with the Secretary by October 15th. If a school drew down a total of $10,000 during the reconciliation period ending September 15, the Secretary should have received FDSLP loan disbursement records (supported by promissory notes) totalling $10,000 by October 15th.

Changes: None.

Section 685.401 Rules for a School Making Loans in the FDSLP

Section 685.401(b)(1)

Comment: A number of commenters asked if schools would be held responsible for the accuracy of information provided by the borrower in the loan origination process.

Discussion: A school is not held responsible for information that is provided by the borrower, provided the school has no evidence or documentation that the information submitted by the applicant is incorrect. However, the borrower will be responsible for the accuracy of information provided in connection with a loan application.

Changes: The Secretary has amended the final regulations to include a provision from the FFEL Program regulations to the effect that unless the borrower is subject to verification or the school has conflicting documentation, the school may rely upon statements made by the borrower.

Section 685.401(c)

Comment: A number of commenters asked what constitutes "all required information" that must be provided by the borrower before a school can disburse FDSLP loan proceeds.

Discussion: Each Federal Direct Stafford and Federal Direct SLS borrower must complete and sign a FAFSA and a FDSLP promissory note before receiving the loan. In addition, each Federal Direct PLUS borrower must complete and sign a combination application/promissory note before receiving a Federal Direct PLUS loan. If these forms are not completed by a borrower, the school may not disburse FDSLP loan proceeds.

Changes: None.

Section 685.401(c)

Comment: A couple of commenters noted that the NPRM did not explicitly require that FDSLP student loans be multiply disbursed although the HEA specifies that FSDLP loans will be made with the same terms and conditions as FFEL Program loans.

Discussion: The Secretary agrees with the commenters.

Changes: The final regulations have been revised to incorporate language requiring FDSLP student loans to be multiply disbursed.

Section 685.403 Disbursing Borrowers' Loan Proceeds and Counseling Borrowers

Section 685.403(c)

Comment: Many commenters objected to the provision requiring a school to obtain a separate written authorization from the borrower in order to release loan proceeds. The commenters noted that an alternative process had recently been approved for use in the FFEL Program for schools using Electronic Funds Transfer (EFT) and should be available to schools in the FDSLP.

Discussion: The Secretary agrees with the commenters and has allowed for a similar process in the final regulations.

Changes: The final regulations have been revised to allow a school to use the authorization statement that will be included in FDSLP promissory notes, provided that the school gives a statement to the borrower within 30 days following each disbursement showing the disbursement applied to the student's account.

Section 685.403(f) and (g)

Comment: A number of commenters asked who would be responsible for the materials used by FDSLP schools for entrance and exit counseling.

Discussion: In the FDSLP, the Secretary will develop materials for a FDSLP school to use, if it so chooses, for entrance and exit counseling. In addition, the Secretary will provide borrower-specific information regarding a borrower's FDSLP loans for a school's use in exit counseling.

Changes: None.

Section 685.406 Withdrawal Procedure for Schools in the FDSLP

Section 685.406(b)

Comment: Many commenters opposed the provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program until the end of the demonstration period. The commenters argued that the provision was unfair to schools that made a good faith effort to participate, but found participation in the FDSLP to be more than they could manage administratively.

Discussion: The Secretary is concerned that schools selected for participation in the FDSLP have an incentive to make the FDSLP work. In addition, because participation will be limited and participating schools will be selected using statistically sound methods, withdrawal of a significant number of schools would seriously undermine the reliability of the cross section of schools and thus the evaluation. However, the Secretary is sensitive to the fact there may be reasons why a school might wish to withdraw despite having made a good faith effort to participate. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program.

Changes: The provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program for the duration of the demonstration program has been removed from the final regulations. The final regulations have been revised to allow a school to withdraw if the school makes a written request with an explanation of why it seeks the withdrawal, and the Secretary approves the request. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program. If a school's request is approved by the Secretary, the withdrawal will become effective after the June 30 following the school's request.

Section 685.407 Remedial Actions

Section 685.407(a)

Comment: Many commenters expressed concern over a school's liability for loans that are unenforceable. Other commenters asked what arrangements are available to schools for relief when a promissory note is unavailable.

Discussion: A school will be financially liable if, due to an error of the school, the loan is unenforceable, or if a borrower receives more than the amount for which the borrower was eligible. This policy is the same for schools participating in the FFEL Program.

If a school cannot furnish the promissory note to the Secretary for a loan it has already disbursed, it will not be exposed to a liability if the school can secure a signed promissory note from the borrower. If a signed promissory note cannot be obtained, the school will be liable for the amount it has disbursed. A school can reduce its potential for liability by forwarding promissory notes to the Secretary and receiving a confirmed acceptance prior to disbursing the loan proceeds or by maintaining a copy of the promissory note at the school. Once the Secretary has accepted the promissory note, the school will no longer be potentially liable for the promissory note.

Changes: None.

Section 685.408 Administrative and Fiscal Control and Fund Accounting Requirements for Schools Participating in the FDSLP

Section 685.408(h)(1)

Comment: Many commenters objected to the requirement that a FDSLP school have a separate bank account for FDSLP funds that it draws down. Many schools indicated that they already have accounting systems in place that would accomplish whatever benefits a separate bank account would provide. Other commenters opposed the requirement because schools already have other Federal accounts for other ED programs and should not be required to set up another account for another Federal program. Other commenters said the cost of opening up another separate bank account would be prohibitive. One commenter pointed out that 31 U.S.C. 6503(h) prohibits Federal agencies from requiring States (including State schools) to deposit Federal funds in a separate bank account.

Discussion: A critical measure of the success of the FDSLP will be the ability of the Secretary and schools to manage and account for funds used to make FDSLP loans. These funds can only be used to make FDSLP loans. In order to ensure program integrity, FDSLP funds must be easily tracked and auditable. While many schools have accounting systems that meet these needs, many schools do not.

Although, the Secretary does not necessarily agree with the commenter that 31 U.S.C. 6503(h) prohibits requiring a State school participating in the FDSLP to maintain a separate bank account, the Secretary has nevertheless eliminated the separate account requirement for State institutions.

Changes: The final regulations have been revised so that State schools are not required to have a separate bank account.

Section 685.408(h)(2)

Comment: Several commenters objected to the requirement that schools maintain an interest-bearing account for FDSLP funds.

Discussion: The provision does not require FDSLP funds to be maintained in a separate interest-bearing account. However, if funds are kept in an interest-bearing account, any interest earned must be returned to the Secretary.

Changes: The Secretary has amended the final regulations to clarify that interest earned on FDSLP funds must be returned to the Secretary.

January 4, 1994 Federal Register Supplementary Information

SUMMARY: The Secretary of Education issues standards, criteria, and procedures governing the Federal Direct Student Loan (Direct Loan) Program in the academic year beginning July 1, 1994.

These standards, criteria, and procedures govern the Federal Direct Stafford Loans Programs, the Federal Direct Unsubsidized Stafford Loans Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: The standards, criteria, and procedures in this notice are effective on January 4, 1994, with the exception of Sec. 685.204, 685.206, 685.301, 685.302, 685.303, 685.304, and 685.308. The sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to, and approved by, the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these sections, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized to begin in July 1994 by the Higher Education Amendments of 1992 (Pub. L. 102–325).

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives participated in regional meetings at various locations around the country in which members of the higher

education community including representatives of colleges, universities, proprietary schools, and educational associations were consulted. The Secretary's representatives have also met with numerous national, regional, and state organizations representing the financial aid community to discuss various aspects of the Direct Loan Program. The Secretary's representatives have met with personnel from schools and financial advisors to assist in the development of the software that will be used by Direct Loan Program schools. In addition, the notice is based in part on final regulations for the direct loan demonstration program in 34 CFR part 685 that were published in the **Federal Register** on July 2, 1993 (58 FR 36088), following the publication of a notice of proposed rulemaking and consideration of public comment. The Secretary believes that participating school's familiarity with those regulations will ease the burden of their participation in the Direct Loan Program.

This notice establishes the policies and procedures necessary for schools to implement the Direct Loan Program and most of the policies and procedures relating to borrowers in the Direct Loan Program. The Secretary anticipates publishing another notice in the spring of 1994 to govern repayment of loans for the 1994–1995 academic year and establish standards and procedures relating to Federal Direct Consolidation Loans.

I. Background

On September 10, 1993, the Secretary published a notice in the **Federal Register** (58 FR 47816) soliciting applications from schools for participation in the Direct Loan Program. Over 1,100 schools responded to that invitation. The Secretary selected 104 schools, representing approximately five percent (5%) of the total Federal Family Education Loan Program (FFEL) loan volume, to participate in the Direct Loan Program for the academic year beginning July 1, 1994. The rules in this notice are applicable for the period beginning July 1, 1994, and ending June 30, 1995. As required by statute, program regulations for the Direct Loan Program in future years will be developed through the use of a negotiated rulemaking process to the extent practicable.

II. Participation

Schools may participate in the Direct Loan Program by originating loans directly, by participating in a consortium of schools that originates loans directly, or by using an alternative originator to originate loans. All schools are responsible for determining student eligibility for Direct Loan and disbursing loan proceeds to borrowers. Some schools participate in the Direct Loan Program and the FFEL concurrently, while the rest of the selected schools participate exclusively in the Direct Loan Program. Some of the schools that participate in both programs concurrently make Direct Loans available to first time borrowers only; other schools make Direct Loans available to students studying in certain divisions of the school and make FFEL loans available to their other students.

The standards and procedures in this notice are, unless otherwise noted, applicable to each participating school regardless of its method or volume of participation. As stated in the notice announcing the selection of participating schools for the 1994-95 academic year, a school may withdraw from participation within 30 days of the publication of these standards, criteria, and procedures.

III. Administrative Fee for Loan Origination

Schools and consortia that originate loans will be paid a fee to assist in meeting the costs of loan origination, including the costs associated with drawing down the funds, maintaining the Direct Loan Program account, and reconciling cash and individual loan records with the Secretary each month. The Secretary prefers that originating schools print promissory note/disclosure statements on site. To assist in compensating for the costs associated with this function, schools that print promissory notes/disclosure statements will be paid a larger fee than schools that do not print promissory note/disclosure statements.

The administrative fee is paid for borrowers for whom a first disbursement has been made and for whom the first disbursement has been reconciled with the Secretary. For the 1994–95 academic year, the program-wide average administrative fee may not exceed $10 per borrower. The Secretary will notify schools that originate loans of the actual fee schedule and payment procedures when they are determined.

This fee structure is applicable to the first year of the program only and is likely to be restricted through the negotiated rulemaking process and when additional data are available.

IV. Making Direct Loans

Beginning with the 1994–95 academic year, all student applications for Federal student aid, including Direct Loans, will be processed by the Central Processor System (CPS). The school will receive an official output from the CPS in the form of a Student Aid Report (SAR) or an Electronic Student Aid Report (ESAR). The ESAR output may be on tapes, cartridges, or rosters. With this official output, the school will be able to assemble a financial aid award package. A school participating in the Direct Loan Program may package Direct Loans as part of the financial aid package in the same manner that a school participating in the FFEL Program packages FFEL Program Loans.

A school in the Direct Loan Program will either originate loans or use the services for an alternative originator. A school will use an alternative originator if it chooses not to originate loans or is not eligible to originate loans. For the first year of the Direct Loan Program, the criteria for eligibility to originate were prescribed by statute. These criteria were included in the September 10, 1993 **Federal Register** notice.

A. Originating Schools

Under the Direct Loan Program, schools and consortia that originate loans must use software provided by the Secretary, or other software based on specifications provided by the Secretary, to create a loan-origination record containing the basic information necessary to make a loan. The software provided by the Secretary reformats the data received from the CPS and prompts the school to add data collected by the school, such as the type of loan, loan amount, and disbursement dates. Because schools have different needs, various options are available to schools after they generate the loan origination record. The software allows schools to computer-generate combined promissory notes/disclosure statements. Alternatively, a school could transmit the information collected by the school to the Direct

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Loan Program Servicer, which upon request, will print promissory notes/disclosure statements on behalf of the school and ship them to the school.

A student who accepts a Direct Loan completes a promissory note and returns it to the school; the school may not disburse Direct Loan funds without a completed promissory note.

An originating school in the Direct-Loan Program requests and obtains loan funds from the Secretary using a process similar to the process for drawing down funds for other Department of Education (ED) programs. The Secretary adopted this process to ease the burden on schools participating in the Direct Loan Program. The Direct Loan Program system, however, differs from the systems used for other ED programs in two ways. First, a school transmits to ED a specific Direct Loan funding request that is separate from its funding requests for other programs. Direct Loan capital must be tracked separately and cannot be used for purposes other than making Direct Loans. The actual transmission request and subsequent electronic transfer of funds uses the same delivery process as is used for the Federal Pell Grant Program. After a request for funds is received, the Secretary uses the Automated Clearinghouse (ACH) process through the Federal Reserve Banking system to deposit funds in a school's designated bank account. Currently, this process takes between 48 to 72 hours from the school's request for funds until the school's receipt of funds.

The second difference between the Direct Loan Program system and the system used for other ED programs is that the amount of loan capital needed by the school is dependent on the eligibility of student and parent borrowers at the school. Funds for the Direct Loan Program are not limited by Congressional appropriations. As a result, there is no need for a maximum funding level to be authorized for a school in the Direct Loan Program. The Direct Loan system, however, incorporates internal fund controls to monitor school drawdown requests; these controls will flag any requests that appear excessive. The system also identifies schools that have failed to comply with program requirements. These flags result in immediate inquiry and intervention by the Secretary.

The software provided by the Secretary computes gross disbursements, loan fees, and net disbursements on the basis of the loan amounts entered by the school. A school requests the amount needed to fund net disbursements to borrowers. The Secretary expects that schools will follow the guidelines for cash management set out in The Blue Book, which is the manual of accounting, recordkeeping, and reporting requirements for postsecondary educational institutions under the federally-funded student financial aid programs. This notice requires any interest earned on funds drawn down to be returned to the Secretary. For future years, the Secretary anticipates that issues related to fiscal control and final accountability will be addressed in more detail in negotiated rulemaking.

After receiving funds from the Secretary, a school disburses funds to students by crediting their accounts at the school or by sending checks to the students. Before a school may disburse funds to a borrower, the school must ensure that it has a completed and signed promissory note. After the first disbursement is made, the school must record the actual disbursed amount and the date of each disbursement in the loan-origination record and transmit all completed loan records and promissory notes to the Secretary. The school transmits subsequent disbursement data to the Secretary as the disbursements occur.

A school is required to reconcile cash and individual loan records monthly. To reconcile cash, a school must provide documentation that the total disbursement minus cancellations, plus return of excess cash, is equal to the amount of money the school has drawn down during a one-month period by the end of the next month. For example, loan records and promissory notes for all disbursements and cancellations made in July 1994 must be transmitted to the Secretary by the end of August 1994. To reconcile loan records, a school's records must match the records of the Direct Loan Program Servicer. The software that is provided to participating schools is designed to assist schools in this reconciliation process.

B. Schools That Use an Alternative Originator

Schools that use an alternative originator transmit to the Direct Loan Program Servicer the data necessary for the Direct Loan Program Servicer to generate the combined promissory note/disclosure statement unless the school chooses to print the promissory note/disclosure statement on its premises. After the Direct Loan Program Servicer generates the promissory note/disclosure statement, it is sent to the school or to the borrower depending upon the school's established procedures. The borrower must complete the promissory note/disclosure statement and forward it as instructed to the Direct Loan Program Servicer or to the school. The Direct Loan Program Servicer must review the promissory note/disclosure statement before funds can be disbursed. If the Direct Loan Program Servicer or the school determines that the promissory note/disclosure statement is not accurate or complete, the promissory note/disclosure statement must be correct and complete before funds can be disbursed. The Direct Loan Program Servicer initiates drawdown of funds to the school based on the completed promissory note/disclosure statement. The school also receives a roster from the Direct Loan Program Servicer identifying each borrower, the disbursement date and amount to be disbursed for each borrower, and the total amount of funds received by the school. Schools that use alternative origination are still responsible for reporting actual disbursement data, reconciling cash, and returning funds that are not used or for which the borrower is not eligible.

In short, the procedures used by a school that uses alternative origination differ in two ways from the procedures of originating schools. The first is that a school under alternative origination may choose to designate the alternative originator as the manager of promissory note/disclosure statements. The second is that a school under alternative origination does not manage the funds draw down process; instead, the school receives funds drawn down by the alternative originator only for those completed promissory notes in the possession of the alternative originator.

The Secretary anticipates that issues related to participation of alternative originators in future years will be subject to the negotiated rulemaking process.

C. Federal Direct PLUS Loans

Federal Direct PLUS loans are made through a process similar to the one used in the Federal PLUS loan program. The parent obtains a combined application/promissory note from the school and, after

completing the combination application/promissory note, sends it to the school. The school completes the school section of the application/promissory note and forwards it to the Direct Loan Program Servicer where data from the note is key entered and a credit check is performed. Alternatively, a school enters data from the note using the software provided by the Direct Loan Program Servicer and electronically forwards this information to the Direct Loan Program Servicer. In either case, the Direct Loan Program Servicer performs a credit check to determine, as required by section 428B(a) of the HEA, whether the parent has an adverse credit history and notifies the school and the parent of the results. If the loan is approved, the Direct Loan Program Servicer sends a disclosure statement to the parent. If the credit check indicates an adverse credit history, the Secretary advises the parent of available options; for example, the parent could obtain an endorser without an adverse credit history. If the loan is approved and the school originates loans, the school may draw down money and disburse loan funds in the same manner as it would for other loans made under the Direct Loan Program. If the school does not originate loans, the alternative originator electronically transmits the funding request for the school based on the application/promissory notes that the Direct Loan Program Servicer holds for that school.

V. Loan Servicing

The Secretary is responsible for servicing and collecting Direct Loans. As noted above, a notice specifically concerned with repayment and collection will be published shortly.

A school's interaction with the Direct Loan Program Servicer during the servicing and collection of the loan is similar to the interaction schools currently have with lenders and guaranty agencies in the FFEL Program. Schools must respond to periodic student status confirmation requests as well as to *ad hoc* requests for information regarding borrowers from the Direct Loan Program Servicer.

Borrowers who default on Direct Loans are added to ED's debt collection system and are subject to all legally authorized default-collection activities.

VI. Impact of Other Rules

Many of the provisions of the FFEL Program that are applicable to the Direct Loan Program have been incorporated into this notice of standards, criteria, and procedures. The Secretary adopted those provisions because schools are familiar with them from their participation in the FFEL Program. Certain policies and procedures currently being developed through negotiated rulemaking for FFEL Program regulations will be adopted in the Direct Loan Program, including policies relating to borrower forgiveness for students who attended schools that have closed or whose eligibility was falsely certified and policies controlling the deferment for economic hardship.

VII. Summary of Contents

A. Subpart A—Purpose and Scope

Subpart A contains descriptions of the types of loans that will be made, the entities involved, and the definitions used in the Direct Loan Program.

B. Subpart B—Borrower Provisions

Subpart B contains conditions of borrower eligibility, which are identical to the borrower eligibility provisions in the FFEL Program. The charges for which borrowers are responsible, loan limits, deferment and forbearance options, and borrower defenses to repayment are also included. The Student Loan Reform Act of 1993 eliminated the Federal Supplemental Loans for Students (SLS) program but increased the loan limits for the Unsubsidized Stafford Program beginning July 1, 1994. The Higher Education Technical Amendments of 1993 further revised the loan limits. The revised loan limits are included in this notice along with a chart (Appendix A) which illustrates the loan limits that will be applicable as of July 1, 1994.

C. Subpart C—Requirements, Standards, and Payments for Schools in the Direct Loan Program

Subpart C contains those provisions governing a school's participation in the Direct Loan Program, including disbursement procedures, entrance and exit counseling, withdrawal procedures, recordkeeping and funds control requirements. The Secretary anticipates that schools will continue with the conscientious efforts demonstrated in the FFEL Program in tailoring the counseling to the borrower's particular needs and making counseling accessible. These efforts have included, for example, sign language interpreters for hearing impaired borrowers or translations for limited English proficient borrowers.

PART 690-PELL GRANT PROGRAM

Subpart A-Scope, Purpose and General Definitions

Sec.

690.1 Scope and purpose.

690.2 General definitions.

690.3 Definitions of payment period.

690.4-690.5 [Removed and Reserved]

690.6 Duration of student eligibility.

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Sec. 690.31 Special conditions affecting the expected family contribution determination for an independent student.

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Subparts D-E-[Removed and Reserved]

Subpart F-Determination of Pell Grant Awards

690.61 Submission process and deadline for student aid report.

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690.65 Transfer student: attendance at more than one institution during an award year.

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Subpart G-Administration of Grant Payments

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690.79 Recovery of overpayments.

690.80 Recalculation of a Pell Grant award.

690.81 Fiscal control and fund accounting procedures.

690.82 Maintenance and retention of records.

690.83 Submission of reports.

690.84 [Removed].

Subpart H-[Removed and Reserved]

Analysis of Comments and Changes

(Authority: 20 U.S.C. 1070a through 1070a-6, unless otherwise noted)

Subpart A-Scope, Purpose and General Definitions

SOURCE: 50 FR 10717, Mar. 15, 1985, unless otherwise noted.

Sec. 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet the cost of their post-secondary education.

(Authority: 20 U.S.C. 1070a)

Sec. 690.2 General definitions.

(a) Definitions of the following terms used in this part are found in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible student

One-year training program
Program of study by correspondence
Proprietary institution of higher education
Postsecondary vocational institution
Recognized equivalent of high school diploma
Secretary
Six-month training program

(b) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Award year
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled
Income Contingent Loan (ICL) Program
Independent student
Parent
Pell Grant Program
Perkins Loan Program
Public or private nonprofit institution of higher education
Regular student
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program

(c) Other terms used in this part are:

Comparable State income tax return: A State income tax return based on the Federal income tax return which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal income tax return with regard to information being verified.

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on—

(1) A student's Effective Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) A student's attendance costs as defined in section 411F(5) of the HEA; and

(3) The amount of funds available for making Pell Grants.

Enrollment status: Full-time, three-quarter-time, or half-time depending on a student's credit hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

(2) Full-time or part-time depending on a student's credit hour work load per academic year, at an institution that does not use academic terms and measures progress by credit hours.

(3) Full-time or part-time depending on a student's clock hour work load per week at an institution that measures progress by clock hours.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements.

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12}$$

$$\frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Half-time student: (1) Except as provided in paragraph (2), an enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): An institution of higher education, or a proprietary institution of higher education, or a postsecondary vocational institution as defined in 34 CFR part 600.

Payment Schedule: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's Expected Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

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(2) The student's cost of attendance as defined in section 411F(5) of the HEA; and

(3) The amount of funds available to the Secretary for making Pell Grants.

Electronic Data Exchange: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for that student which is based on the corrected or verified information.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Pell Grant Index: The term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status, at that institution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Student Aid Report: A Student Aid Report—

(1) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(2) For the Electronic Data Exchange, that is signed by the applicant and, if corrections are made—

(i) Is signed by the applicant's spouse; and

(ii) If the applicant is dependent, is signed by one of his or her parents.

(Authority: 20 U.S.C. 1070a, unless otherwise noted)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 41926, Nov. 19, 1986; 51 FR 43161, Nov. 28, 1986]

Note: (a) and (b) redesignated (b) and (c) respectively and amended, and new paragraph (a) added November 6, 1991, effective December 28, 1991.

Sec. 690.3 Definitions of payment period.

(a) Payment period for an eligible program that has academic terms:

(1) Except as noted in paragraph (a)(2) of this section, for an eligible program that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) For an eligible program that uses semesters, trimesters, quarters or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a Pell Grant for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) Payment period for *an* eligible program that does not have academic terms: (1) For a student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(2) For a student whose educational program is more than one academic year, the first and second payment periods must be calculated under paragraph (b)(1) of this section. For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(3) For a student whose educational program is less than an academic year—

(i) The first payment period must be the period of time which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

(4) If an institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a)

Note: Section 690.3 amended November 6, 1991, effective December 28, 1991.

Sec. 690.4 and 690.5 [Removed and Reserved]

Sec. 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(c) Except as provided in paragraph (d) of this section, for a student who receives his or her first Pell Grant on or after July 1, 1987, the period of time required to complete his or her undergraduate baccalaureate course of study may not exceed the full-time equivalent of—

(1) Five academic years for an undergraduate degree or certificate program that normally requires four academic years or less of study to complete; or

(2) Six academic years for an undergraduate degree or certificate program that normally requires more than four academic years of study to complete.

(d)(1) The institution a student is attending may waive the limitations contained in paragraph (c) of this section if it determines that the student's failure to complete his or her undergraduate program in the time set forth in that paragraph resulted from an undue hardship caused by—

(i) The death of a relative of the student;

(ii) An injury or illness of the student; or

(iii) Other special circumstances.

(2) The institution must support with appropriate documentation any determination of undue hardship made under this paragraph.

(e) For the purpose of paragraph (c) of this section, any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in determining that student's period of Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

Sec. 690.7 Institutional participation.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant program if it—

(i) Meets the appropriate definition set forth in 34 CFR part 600;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR Part 668.

(2) If an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution before the date the institution became ineligible is paid a Pell Grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student, who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar 15, 1985, as amended at 51 FR 43161, Nov. 28, 1986]

Note: (a)(1)(i) amended November 6, 1991, effective December 28, 1991.

Sec. 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment

status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c) Notwithstanding the limitation in paragraph (b)(3) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under Sec. 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment Status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.

(Authority: 20 U.S.C. 1070a)

Sec. 690.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Pell Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Pell Grant assistance. However, the other institution may determine and pay the student's Pell Grant assistance if the institutions agree in writing to that agreement.

(2) The institution which determines and pays the Pell Grant assistance shall—

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Pell Grant assistance.

(Authority: 20 U.S.C. 1070a)

Sec. 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely for the institution's cost of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, Perkins Loan, and ICL programs.

(Authority: 20 U.S.C. 1096a)

Sec. 690.11 Pell Grant payments from more than one institution.

A student is not entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a)

Subpart B-Application Procedures for Determining Expected Family Contribution

SOURCE: 50 FR 10721, Mar. 15, 1985, unless otherwise noted.

Sec. 690.12 Application.

(a) As the first step to receiving a Pell Grant, a student shall apply on an approved form to the Secretary to have his or her expected family contribution determined. A copy of this form is not acceptable.

(b) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(c) A student, and where required the student's parents or spouse, shall provide to the institution or the Secretary a copy of his or her Federal, State, and/or local income tax returns and any other documents, if requested by

the Secretary or the institution for verification of the accuracy of the information submitted.

(d) For each award year the Secretary, through publication in the FEDERAL REGISTER, established deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0110)

Sec. 690.13 Notification of expected family contribution.

The Secretary sends to each eligible applicant, a "Student Aid Report" (SAR) which states the amount of the applicant's expected family contribution (Pell Grant Index) and information used in that calculation. If any of the information is incorrect, an applicant shall correct it according to procedures established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0132)

Note: Section 690.13 amended November 16, 1991, effective December 28, 1991.

Sec. 690.14 Applicant's request for recalculation of expected family contribution because of clerical or arithmetic error, or updating of projected data.

(a) An applicant may request a recalculation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) [Reserved]

(c) A request for recalculation must be made on an approved form and this form must be received by the Secretary no later than the deadline date established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

[50 FR 10721, Mar. 15, 1985, as amended at 51 FR 8954, Mar. 14, 1986]

Subpart C-Expected Family Contributions for Students With Special Conditions

Sec. 690.31 Special conditions affecting the expected family contribution determination for an independent student.

(a) For the 1992-93 award year, an independent student qualifies to have his or her expected family contribution determined using expected income data from 1992 if—

(1) The student was employed full-time in 1991 (at least 35 hours per week for a minimum of 30 weeks during 1991) and is no longer employed full-time;

(2) A spouse whose 1991 income from work must be reported under sections 411F(1) and 411(d)(2) of the Higher Education Act of 1965, as amended (HEA) has lost his or her job and remained unemployed for at least 10 weeks during 1992;

(3) The student or spouse whose 1991 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1992 because of the occurrence in 1991 or 1992 of—

(i) A disability; or

(ii) A natural disaster;

(4) The student or spouse whose income must be reported under sections 411F(1) and 411(d)(2) of the HEA received unemployment compensation or nontaxable income in 1991 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1992 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare and court ordered child support;

(5) The student has become separated or divorced after he or she submitted his or her application;

(6) A spouse whose 1991 income must be reported under sections 411F(1) and 411(d)(2) of the HEA has died after the student has submitted his or her application;

(7) The student's last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) of the HEA, has died after the student has submitted his or her application; or

(8) The student or spouse served on active duty in connection with Operation Desert Shield or Operation Desert Storm.

(b) If an independent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI) as defined in section 411F(1) of the HEA is determined using expected income data from 1992 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 102-170, 102-26)

Note: Section 690.31 amended June 25, 1992, effective August 9, 1992.

Sec. 690.32 Special conditions affecting the expected family contribution determination for a dependent student.

(a) For the 1992-93 award year, a dependent student qualifies to have his or her expected family contribution determined using expected income data from 1992, if—

(1) A parent or stepparent whose 1991 income from work must be reported has lost his or her job and remained unemployed for at least 10 weeks during 1992;

(2) A parent or stepparent whose 1991 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1992 because of the occurrence in 1991 or 1992 of—

(i) A disability, or

(ii) A natural disaster;

(3) A parent or stepparent whose income must be reported under sections 411F(1) and 411(d)(2) received unemployment compensation or nontaxable income in 1991 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1992 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include such items as Social Security benefits, welfare, and court ordered child support;

(4) The parent or parents of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under sections 411F(1) and 411(d)(2) of the HEA for this condition to apply;

(5) A parent or stepparent whose 1991 income must be reported under section 411F(1) of the HEA has died after the student has submitted his or her application. However, if the parent referred to in this paragraph is the last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) the student must file an application under 690.31(a)(7) if he or she wishes to use income data from 1992; or

(6) A parent or stepparent served on active duty in connection with Operation Desert Shield or Operation Desert Storm.

(b) If a dependent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI), as defined in section 411F(1) of the HEA is determined using expected income data from 1992 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 102-170, 102-26)

[FR Doc. 91-972 Filed 1-15-91; 8:45 am]

Note: Section 690.32 amended June 25, 1992, effective August 9, 1992.

Subpart D-[Removed and Reserved]

Subpart E-[Removed and Reserved]

Subpart F-Determination of Pell Grant Awards

SOURCE: 50 FR 10722, Mar. 15, 1985, unless otherwise noted.

Sec. 690.61 Submission process and deadline for student aid report.

(a) Submission process. (1) Except as provided in paragraph (a)(2) of this section, in order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution may make one disbursement of a student's Pell Grant without a valid SAR if it follows the procedures described in Sec. 690.77.

(3) An institution is entitled to rely on SAR information except under conditions set forth in Sec. 668.14(f) and 668.60.

(b) Student Aid Report deadline.

(1) Except as noted in Sec. 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in Sec. 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

(Authority: 20 U.S.C. 1070a)

[51 FR 43162, Nov. 28, 1986]

Note: (b)(2) amended November 6, 1991, effective December 28, 1991.

Sec. 690.62 Calculation of a Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) At full funding, no payment may be made to a student if the student's Scheduled Pell Grant is less than $200.

(c) At less-than-full-funding, no payment may be made if—

(1) The student's Scheduled Pell Grant is less than $50; or

(2) The student's Scheduled Pell Grant at full funding would have been less than $200.

(Authority: 20 U.S.C. 1070a (a)(2))

Sec. 690.63 Calculation of a Pell Grant for a payment period.

(a) In an eligible program using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule (full-time

students), or one of the Disbursement Schedules (part-time students), as appropriate; and

(3)(i) Dividing the amount determined in paragraph (a)(2) of this section by the number of terms in the academic year unless the terms in an eligible program are not of equal length; or

(ii) If the terms in an eligible program are not of equal length, multiplying the amount determined in paragraph (a)(2) of this section by the following fraction:

$$\frac{\text{The length of the term in question}}{\text{The length of the academic year}}$$

(b) A single disbursement may not exceed 50 percent of the award determined in paragraph (a)(2) of this section. To ensure this result, an institution shall make multiple disbursements within a term, if that term is longer than half the academic year. Subsequent disbursements within that term may not be made until the student has completed the portion of the term for which he or she was initially paid.

(c) In an eligible program which measures progress by clock hours or which measures progress by credit hours or units but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by—

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by—

$$\frac{\text{The number of credit or clock hours the student is expected to take in a payment period}}{\text{The number of credit or clock hours in an academic year}}$$

(d) Notwithstanding paragraphs (a), (b), and (c) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award year may not exceed his or her Scheduled Pell Grant award for that award year.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Note: (a), (a)(3)(i), (a)(3)(ii), and (c) amended November 6, 1991, effective December 28, 1991.

Sec. 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant for an award year.

(c)(1) If an eligible program uses academic terms and offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For each mini-session, an institution that uses academic terms in an eligible program shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(Authority: 20 U.S.C. 1070a)

Note: (c)(1) and (c)(2) amended November 6, 1991, effective December 28, 1991.

Sec. 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.19.)

(b) The second institution shall calculate the student's award according to Sec. 690.63.

(c) The second institution may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

(d) If a student's Scheduled Pell Grant at the second institution differs from the Scheduled Pell Grant at the first

institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Pell Grant at the first institution to determine the percentage of the Scheduled Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Pell Grant at the second institution to which the student is entitled.

(e) The student's Pell Grant for each payment period is calculated according to the procedures in Sec. 690.63 unless the remaining percentage of the Scheduled Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled Pell Grant.

(Authority: 20 U.S.C. 1070a)

[50 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28,1986]

Sec. 690.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a workload of at least 12 hours of preparation per week.

(b)(1) For an institution, if there is not a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year, or program if the program is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year, or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c)(1) For an institution, if there is a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant, and;

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) The non-residential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the non-residential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or non-residential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she has submitted 25 percent of the non-residential lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the non-residential portion of the program) for the second payment period after the student has submitted 75 percent of the non-residential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's Pell Grant disbursement for the residential portion of the program is calculated according to the procedures in Sec. 690.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(Authority: 20 U.S.C. 1070a)

[51 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Subpart G-Administration of Grant Payments

SOURCE: 50 FR 10724, Mar. 15, 1985, unless otherwise noted.

Sec. 690.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay Pell Grant awards to students.

(Authority: 20 U.S.C. 1070a)

Sec. 690.72 Institutional participation agreement.

(a) The Secretary may enter into an agreement with an institution of higher education under which it will calculate and pay Pell Grant awards to its students. This agreement is

on a standard form provided by the Secretary which contains the necessary terms to carry out this part.

(b) The Secretary sends Payment and Disbursement Schedules for each award year to an institution that has entered into an agreement under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

EDITORIAL NOTE: Information collection requirements contained in Sec. 690.72 will become effective after approval by the Office of Management and Budget.

Sec. 690.73 Termination of institutional participation agreement.

(a) Termination by the Secretary. The secretary may terminate the agreement with an institution by giving the institution—

(1) 30 days written notice; or

(2) Less than 30 days written notice if shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) Information required. An institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution before the termination date.

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year.

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) Termination by the institution. An institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) Termination because of a change in ownership which results in a change of control. The agreement automatically terminates when an institution changes ownership which results in a change of control. The Secretary may enter into an agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.74 Provision of funds to institutions.

The Secretary provides funds to an institution for each award year in advance or by way of reimbursement during the course of that year, based on the Secretary's determination of the institution's need for funds to pay Pell Grants or its needs for reimbursement for Pell Grants already paid.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled as at least a half-time undergraduate student; and

(3)(i) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a)

Note: (a)(3) amended November 6, 1991, effective December 28, 1991.

Sec. 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

Note: (b) amended November 6, 1991, effective December 28, 1991.

Sec. 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) An institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3)(i) Receives a PGI from the Secretary; or

(ii) Receives the PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her PGI from the Secretary, or his or her PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's PGI based on correct information;

(3) Makes the disbursement of the student's Pell Grant for the first payment period based on the recalculated PGI; and

(4) Reports the changes in the student's application information and the recalculated PGI to the Secretary within deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if it does not receive a valid SAR for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's PGI.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 668.61(a).

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

Note: Section 690.77 amended November 6, 1991, effective date not known.

Sec. 690.78 Method of disbursement—by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or here account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is three weeks before the first day of classes of a payment period.

(c) The institution shall return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if her or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraphs (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a)

Note: (d)(3) amended November 6, 1991, effective date December 28, 1991.

Sec. 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers to a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Authority: 20 U.S.C. 1070a)

Note: (c) amended November 6, 1991, effective December 28, 1991.

Sec. 690.80 Recalculation of a Pell Grant award.

(a) Change in expected family contribution. (1) The institution shall recalculate a Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under Sec. 690.14;

(ii) Extraordinary circumstances which affect the expected family contribution under Sec. 690.39 or Sec. 690.48; or

(iii) A correction based on information required in Sec. 690.12 or Sec. 690.77.

(2) Except as described in Sec. 690.77(f)(1), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) Change in enrollment status. (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) Change in cost of attendance. If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(Authority: 20 U.S.C. 1070a)

Sec. 690.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution shall notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice must be given

by including in the name of each such account that Federal funds are deposited therein.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay Pell Grants to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a)

(Approved by OMB under control number 1840-0536)

Sec. 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) which include the fiscal and accounting records that are required under Sec. 690.81, records required for audits in 34 CFR 668.23, the Student Aid Report of each student applying for a Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution;

(2) The name and social security number of and the amount paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's cost of attendance;

(6) How each student's full or part-time enrollment status was determined; and

(7) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for five years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a, 1232f)

(Approved by the Office of Management and Budget under control number 1840-0132)

Sec. 690.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to a Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary all SAR Payment Vouchers (or the equivalent as defined by the Secretary) for that award in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, and

(ii) The Secretary accepts those SAR Payment Vouchers.

(2) The Secretary accepts SAR Payment Vouchers that are submitted in accordance with procedures established through publication in the **Federal Register**, and that contain information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (c) of this section.

(b)(1) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Pell Grant for which a student qualifies, by submitting to the Secretary an SAR Payment Voucher (or the equivalent as defined by the Secretary) that discloses the basis and result of the change in award for each student. Through publication in the **Federal Register**, the Secretary divides the award year into periods and establishes the deadlines by which the institution shall report changes occurring during each period. The institution shall submit the SAR Payment Voucher reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(b)(2) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(c)(1) An institution that has timely submitted an SAR Payment Voucher for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, an SAR Payment Voucher necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Voucher timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(2) An institution that has timely submitted and had accepted an SAR Payment Voucher for a student in accordance with this section shall report a reduction in the

amount of a Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under Sec. 690.79(a).

(3) The Secretary pays or recognizes a reduction in accountability under this paragraph after deducting the amount of any overpayments for which the institution is liable under Sec. 690.79(a).

(d) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a), (b) or (c) of this section.

(Authority: 20 U.S.C. 1070a, 1094, 1226a-1)

(Approved by the Office of Management and Budget under control number 1840-0132)

Note: Section 690.83 and authority citation amended November 6, 1991, effective date not known. Paragraph (c)(1)(ii) amended June 25, 1992, effective August 9, 1992.

Sec. 690.84 [Removed]

Note: Sec. 690.84 removed November 6, 1991, effective December 28, 1991.

Subpart H-[Removed and Reserved]

Analysis of Comments and Changes November 6, 1991 Federal Register

In response to the Secretary's invitation in the NPRM, 225 parties submitted comments on the proposed regulations. An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 690.2 General Definitions

Comments: Most commenters supported the proposed changes to the general definitions found in this section. Seven commenters supported the signature requirement for the Electronic Data Exchange that institutions need only obtain a signature by one of the applicant's parents if the applicant is a dependent student. Two commenters opposed this change because they believed requiring even one parental signature on the Electronic Student Aid Report (ESAR) is a deterrent to electronic processing; these commenters recommended that the requirement for signatures be eliminated. Seven commenters supported the name change from Pell Grant Electronic Data Exchange to Electronic Data Exchange. Two commenters opposed the name change because of concern that too many changes have been made recently.

Discussion: The Secretary revised the definition of a Valid Student Aid Report to further reduce the administrative burden on institutions and students. The Secretary changed the name Pell Grant Electronic Data Exchange to Electronic Data Exchange to reflect the expanded use of the electronic exchange system for all programs administered under Title IV of the Higher Education Act of 1965, as amended.

Changes: A change has been made. The definition of a Valid SAR provides that, for the purpose of the ESAR, a parent's or spouse's signature is required only when the student is correcting the ESAR. If no corrections are necessary, only the student's signature is required. If all information on the ESAR is accurate, no parent's or spouse's signature is needed if the student is a dependent student; if the student is an independent student, no spouse's signature is needed. However, the student's signature is always required.

Section 690.75 Determination of Eligibility for Payment

Comments: Several commenters expressed concern with the proposed requirement to withhold payments to students until the student has completed the required credit hours for which he or she has been paid, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms. The commenters asserted that this proposal defeats the intent of the law recognizing the eligibility of less-than-half-time students. Moreover, these commenters claimed that this provision will deny payment to the neediest students for direct educational costs until long after the expenses are incurred. They also indicated that this proposal would create undue hardship for these students. A few commenters recommended that this provisions be deleted. Two commenters strongly opposed the provision that permits Pell Grant awards to less-than-half-time students. They asserted that awards to less than half-time students will be administratively burdensome and lead to an increase in program abuse. Two commenters supported the less-than-half-time eligibility provision for a Pell Grant; they indicated that less than half-time eligibility will encourage greater college attendance.

Discussion: The Secretary would like to clarify the provisions requiring an institution to withhold payments to a student until the student has completed the required credit hours for which he or she has been paid, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms. Under the Department's current policy (which has been a longstanding financial aid practice), a student is not eligible for a second payment until the student has completed the required clock hours for which he or she has been paid. In other words, the hours for which a first disbursement was made must be completed before a second disbursement may be made. Under the proposed provision of Sec. 690.75, the Secretary is including the completion of credit hours under this policy for those programs that do not have academic terms.

The NPRM included provisions for the eligibility of certain less-than-half-time students for award years 1989-90 and 1991-92. The policy changes discussed above regarding credit hours were construed by the commenters to be changes that are connected in some way with less-than-half-time eligibility; they are separate and unrelated. The provision regarding credit hours does not defeat the intent of the statute regarding the eligibility of less-than-half-time students. It simply requires a less-than-half-time student, with all other students, to complete the requisite number of credit hours before the student is eligible for a second payment.

These regulations do not include provisions for the eligibility of less-than-half-time students for the following reasons. First, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1990 provides eligibility for less-than-half-time students for award year 1989-90. A student who, for award year 1989-90, was enrolled as an undergraduate student on a less-than-half-time basis, had a PGI less than or equal to zero, received a Pell Grant for a period of enrollment before January 1, 1990, and was otherwise eligible, was eligible to receive a Pell Grant for less-than-half-time attendance. These statutory conditions are not provided in these regulations, given that the award year has been completed. Secondly, since the publication of the NPRM, the eligibility of less-than-half-time students was rescinded for award year 1991-92 by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1991.

Changes: The less-than-half-time eligibility provisions were deleted.

Section 690.76 Frequency of Payment

Comments: Seven commenters concurred with the proposal that an institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within that award year, based on the coursework completed by the student. All commenters believed it would greatly decrease the administrative workload.

Discussion: The Secretary agrees with the commenters that this provision will reduce administrative burden.

Changes: None.

Section 690.77 Initial Disbursement of a Pell Grant in an Award Year Without a Valid SAR

Comments: One commenter indicated an appreciation for the clarification regarding the initial disbursement of a Pell Grant without a valid SAR. One commenter opposed this change because the commenter believed that the change would only assist highly computerized institutions which inherently have fewer problems delivering aid to students promptly than do institutions that are not computerized.

Discussion: The Secretary proposed this clarification to reflect changes to the new student aid delivery system for the 1990-91 award year. While the Secretary encourages the use of electronic systems to provide prompt delivery of aid to students, and while there is a greater burden placed on institutions that do not choose to be computerized, an institution does not have to be computerized in order to make an initial disbursement without a valid SAR. However, the Secretary believes that this clarification is necessary to ensure that an institution uses the PGI produced by the Secretary for awarding and disbursing Pell Grant funds.

Changes: None.

Section 690.78 Method of Disbursement—by Check or Credit to a Student's Account

Comments: A few commenters objected to the requirement that prohibits an institution for including any charges other than tuition and fees, room, and board in determining which outstanding charges may be paid by a credit to a student's account, if a student has not picked up his or her check within 15 days after the student's enrollment. These commenters indicated that under current regulations any amount owed by the student to the institution for education costs should be allowed to be paid by a credit to the student's account.

Discussion: The Secretary included this provision in the NPRM to clarify that the statutory requirement regarding the crediting of a student's account also applies in the case where the student did not pick up his or her check within 15 days after the end of the student's enrollment. Section 411(e) of the HEA expressly provides that any disbursement to be made by crediting a student's account is generally limited to tuition and fees, room and board. Under Section 690.78(a)(2) of the current regulations, unless the student has agreed otherwise, an institution may only credit tuition and fees, room and board to a student's account. The Secretary would also like to emphasize that if an institution has, without a student's agreement, credited an account for expenses other than tuition and fees, room and board, the institution has not been following the statutory and regulatory requirements and may be subject to a fine and corrective actions.

Changes: None.

Section 690.79 Recovery of Overpayments

Comments: Two commenters agreed with the proposed change to the regulations regarding a student's ineligibility for Title IV aid due to an overpayment. One commenter opposed this change because of its effect on transfer students. He indicated that, in the case of a student who transfers from institution A to institution B, institution B may find itself in an overpayment situation because of a decision to disburse a Pell Grant before the receipt of a transcript, which, when it arrives, indicates a previous overpayment. Another commenter recommended that a tracking system be established by the Department to prevent the student from receiving any future Student Aid Reports, and to monitor any repayments made by the student. The commenter also suggested that institutions have an approved form for referring overpayments.

Discussion: The Secretary does not have discretion with respect to making this change because this provision is required by statute. However, the Secretary appreciates all other comments regarding overpayments and will consider them in the development of future legislative proposals and any implementing regulations or delivery system changes resulting from those legislative revisions.

Changes: None.

Section 690.83 Submission of Reports

Comments: Most commenters opposed both changing the final deadline date for the submission of all SAR Payment Vouchers (or the equivalent as defined by the Secretary) for a given award year from December 31 to September 30 following the end of that award year and the imposition of fines for not submitting SAR Payment Vouchers within the reporting period following the change or transaction at issue. The commenters objected to this change in the final reporting deadline from December 31 to September 30 because September is generally regarded as the busiest month of a new school year; they asserted that this proposed deadline

date will impose unnecessary burdens on institutions at a time when institutions are least able to cope with those increased burdens. The commenters also indicated that students cannot be served on a timely basis with an unworkable and unrealistic deadline date of September 30. A student-by-student reconciliation of accounts and the submission of Pell Grant reports cannot be accommodated during the Fall term enrollment period without significantly impairing the delivery of funds. Moreover, at some institutions with a second summer term starting as late as July and ending in mid-to-late August, a September 30 reporting date does not allow adequate time to reconcile prior year records. Several commenters indicated that the proposed deadline date change will impose hardship on institutions that have little or no computerized support services. One commenter believed the September 30 deadline was not an unreasonable deadline because the campus-based Fiscal Operations Report and Application to Participate (FISAP) requires the reporting of Pell Grant expenditures for the most recent year and the FISAP deadline is usually before October 1. A number of commenters suggested an October 31 deadline as a more favorable and workable deadline that would alleviate the burden imposed by the September 30 deadline. Several commenters suggested that November 30th is a more manageable deadline date.

A large number of commenters objected to the requirement that an institution submit a Payment Voucher during the institution's next required reporting period for each student whose Pell Grant award has changed as a result of changes in enrollment status, a change in the cost of attendance or a change in the student's eligibility. The commenters claimed that this reporting requirement will impose an administrative burden on institutions. Many commenters asserted that this proposed requirement will be particularly difficult for institutions that do not have the computerization capabilities necessary to provide adjustments to award, particularly for those cases in which there is a short time frame in which to submit the changes. For example, this could occur if a student makes a change in enrollment status but the financial aid office does not receive notice of that change until after a report has been filed for that reporting period. Some commenters approved of this requirement because, while some institutions continually carry excessive authorization levels, students at other institutions are deprived because of artificially low authorization levels. Three commenters supported the requirement for the submission of Payment Vouchers during the next required reporting period because they felt that this change will ensure that the Pell Grant allocations are accurate and reflect actual and anticipated spending.

Many commenters strongly opposed the imposition of fines on institutions that fail to comply with the requirement to file reports during each required reporting period and that fail to submit Payment Vouchers (or the equivalent as defined by the Secretary) during the next required reporting period. A few commenters wanted more information to be provided in terms of how fines will be assessed, the amount of times, and any appeal procedures. A commenter objected that consequences of failing to submit required reports, or filing inaccurate or untimely reports, were not made sufficiently clear, and that institutions must be informed of the penalties for such noncompliance, and the grounds and methods used to increase or decrease the amount of Pell Grant funds authorized and available for payment to the institution. Several commenters strongly opposed this change because there appears to be no mechanism for appeals. Other commenters indicated that the imposition of fines based on the timing of the reporting of adjustments is illogical because the behavior of students is not within the institution's control. Most commenters recommended that the proposal to fine institutions be eliminated.

Discussion: In response to the commenters' concern that the September 30 deadline for the submission of all Payment Vouchers is unreasonable and burdensome, the Secretary has reviewed the comments and determined that the need to better control the cash flow process in the Pell Grant Program makes a September 30 deadline date necessary.

The Secretary recognizes that possible additional administrative burden may be incurred by institutions. However, the increasing need to manage carefully funds appropriated for Pell Grants for each year, and the consequences for students and for the public of inadequate reporting on the control and availability of Pell Grant funds, demonstrates the need for more regular reporting. Pursuant to 20 U.S.C. Sec. 1070a, the Department has the obligation to manage the provision of appropriated funds in such a way as to determine whether the funds already appropriated for a particular year will suffice for all Pell grants to be made for an award year. That process relies on timely receipt of information from institutions on their Pell Grant transactions, and the principal method for transmitting that information is the reporting mechanism described in Sec. 690.83.

The revisions to the regulations made here are designed to codify the Secretary's consistent interpretation of the meaning of Sec. 690.83, and to improve compliance with the requirement in Sec. 690.83 that institutions timely report grant transactions. Tardiness by institutions in reporting their Pell Grant awards and adjustments to those awards can cause serious distortions in the measurement of the need for funds in the program. Failure to submit an initial SAR Payment Voucher for an award in a timely manner can cause an underestimate of funding needs, and under-allocation of funds; on the other hand, tardiness in reporting adjustments causes distortions in the assessment of the sufficiency of existing appropriations. Unneeded funds provisionally committed by the Department of finance grants for one institution should be promptly made available to meet the actual needs of students at other institutions; tardiness by institutions in releasing their reservation of unneeded funds distorts the need for supplemental appropriations. Delays by institutions in releasing reserved but unneeded funds similarly complicate the Federal budget process by distorting the need to use out-year appropriated funds, when legally available, to meet current year grant funding needs.

The Secretary strongly believes that the benefits to the Federal Government and institutions resulting from this change far outweigh any administrative burden; institutions will benefit from reallocation of funds. The proposal to require an institution to submit its Payment Vouchers during the next required reporting period for those students whose Pell Grant awards or payments have changed as a result of changes in enrollment status, transferring, dropping out, or the loss of eligibility for future payment will better control the Pell Grant cash flow process. The Secretary considered that a large number of institutions do not submit Payment Vouchers in a timely fashion and believes it is essential to ensure that institutions' Pell Grant allocations are both adequate and accurate to serve students' needs. The Secretary believes that

this change would alleviate much of the cash flow problem of managing expenditures for the Department.

The comment regarding the need to inform institutions regarding the consequences of not meeting the various reporting deadlines suggests, first, the need to clarify the consequence of failing to meet the annual SAR Payment Voucher deadline date established in Sec. 690.83(a) at issue here. Although the eligible student who submits a valid SAR to the institution by the deadline established under Sec. 690.61(b) for the award year in question and who meets verification requirements has an unqualified right pursuant to Sec. 690.61 to receive a Pell Grant disbursement from the institution, the right of the institution itself to payment from the Department is governed by Sec. 690.83(a), which requires the institution to submit for each Pell Grant recipient the SAR Payment Voucher needed to establish the amount of the individual's award. The Department promulgated Sec. 690.83(a), like Sec. 690.61 for the student applicant, as part of its establishment of the payment procedures for Pell Grant awards, in order to require an institution seeking payment for an award to a Pell Grant applicant, or seeking credit for Federal advances disbursed to a student recipient, to submit all supporting SAR records by the annual deadline date. The Department promulgated Sec. 690.83(a) in 1985 to induce institutions to present their documentation for claims for funding with reasonable diligence within or shortly after the close of the award year for which the funds were appropriated, or have those claims barred.

The Department has likewise recognized, since implementation of this deadline regulation in 1985, that at times institutions have not succeeded in reporting adjustments to awards that were at least initially reported; this resulted in less serious distortions of the funding needs and availability. The Department has regarded, an continues to regard, timely initial SAR Payment Voucher submission as an essential first step in responsible compliance with the Department's reporting needs, but has not construed the annual deadline requirement in a way that would bar even minor adjustments where necessary to correct the amount needed for previously-reported awards. Imposition of that deadline in a strict manner would bar any adjustment, and, therefore, any additional payments for an institution that did not submit by that deadline, the documents needed to correct a previous report. The Department has, therefore, in annual notices establishing the deadline, interpreted the regulation to allow certain exceptions that are consistent with the intent of Sec. 690.83 to secure accuracy as well as timeliness in award justification for those student grant accounts previously established by timely submission of a SAR record. These notices recognized certain specific circumstances in which post-deadline adjustments are allowed in order to correct individual student grant account records that were timely established by a satisfactory SAR record submission, and described procedures for such corrections. In these cases in which the Department allows an adjustment to a student recipient's account, the institution may qualify for additional funds, or for credit in the adjusted amount against Federal advances already received.

To clarify and codify the Department's interpretation of Sec. 690,83, therefore, the interpretation included in the several annual deadline notices is now included in Sec. 690.83 as revised in this final regulation.

There is no change to the proposal to impose fines on institutions that fail to comply with the requirement to report during each required reporting period, and that fail to submit Payment Vouchers (or the equivalent as defined by the Secretary) during the next required reporting period. In response to the request for more information concerning how fines will be assessed and the amount of fines, the Secretary is exploring various options to ensure that fines are tailored to the nature of the violation. The Secretary believes that 34 CFR 668.85 provides an adequate appeal process for institutions that wish to contest fines.

Changes: None.

PART 692-STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A-General

Subpart B-What Is the Amount of Assistance and How May It Be Used?

Subpart C-How Does a State Apply To Participate In This Program?

Subpart D-How Does a State Administer Its Community Service-Learning Job Program?

Subpart E-How Does a State Select Students Under This Program?

Summary of Comments

Authority: 20 U.S.C 1070c through 1070c-4, unless otherwise noted.

Note: authority citation amended January 28, 1994, effective date not known.

Subpart A-General

Sec. 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States in providing grants and work-study assistance to eligible students who attend institutions of higher education and have substantial financial need. The work-study assistance is provided through campus-based community service work learning study programs, hereinafter referred to as community service-learning job programs.

(Authority: 20 U.S.C. 1070c-1070c-4)

Sec. 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(A) State participation.

A State that meets the requirements in Sec. 692.20 and 692.21 is eligible to receive payments under this program.

(b) Student participation.

A student must meet the requirements of Sec. 692.40 to be eligible to receive assistance from a State under this program.

(Authority: 20 U.S.C. 1070c-1070c-4, unless otherwise noted))

Sec. 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60—75.62 (Ineligibility of Certain Individuals to Receive Assistance).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(d) The Student Assistance General Provisions in 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c-1070c-4)

Note: (b) and (d) amended January 28, 1994, effective date not known.

Sec. 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) Definitions in 34 CFR Part 668. The following terms used in this part are defined in 34 CFR Part 668:

Enrolled (Sec. 668.2).

HEA (Sec. 668.2).

Public or private nonprofit institution of higher education (Sec. 668.3).

Secretary (Sec. 668.2).

State (Sec. 668.2).

(b) Definitions in the HEA. The following terms used in this part are defined in section 481(a), (b), (c), and (d) of the HEA:

Academic year
Institution of higher education
Postsecondary vocational institution
Proprietary institution of higher education

(c) Other definitions that apply to this part. The following additional definitions apply to this part:

"Full-time student" means a student carrying a full-time academic workload-other than by correspondence-as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

"Nonprofit" has the same meaning under this part as the same term defined in 34 CFR 77.1 of EDGAR.

(Authority: 20 U.S.C. 1070c-1070c-4)

Note: (a) amended, (b) redesignated (c), and new paragraph (b) added January 28, 1994, effective date not known.

Subpart B-What Is the Amount of Assistance and How May It Be Used?

Sec. 692.10 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the SSIG program an amount which bears the same ratio to the Federal SSIG funds appropriated as the number of students in that State who are "deemed eligible" to participate in the State's SSIG program bears to the total number of students in all States who are "deemed eligible" to participate in the SSIG program, except that no State may receive less than it received in fiscal year 1979.

(2) If the Federal SSIG funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal SSIG funds it received in fiscal year 1979, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal SSIG funds appropriated as the amount of Federal SSIG funds that State received in fiscal year 1979 bears to the amount of Federal SSIG funds all States received in fiscal year 1979.

(b) For the purpose of paragraph (a)(1) of this section, the Secretary determines the number of students "deemed eligible" to participate in a State's SSIG Program by dividing the amount of that State's SSIG expenditures, including both its Federal allotment and the State-appropriated funds matching the allotment, by the average grant award per student of all participating States. The Secretary determines the "average grant award per student" by dividing the total number of student recipients for all States into the total amount of SSIG expenditures for all States, including both the Federal allotments and the State-appropriated funds matching those allotments. In making this determination, the Secretary uses the most current available data reported by each State.

(Authority: 20 U.S.C. 1070c)

Note: (b) amended January 28, 1994, effective date not known.

Sec. 692.11 For what purposes may a State use its payments under the program?

A State may use the funds it receives under this part only to make grants to students and to pay wages or salaries to students in community service-learning jobs.

(Authority: 20 U.S.C. 1070c)

Subpart C-How Does a State Apply To Participate in This Program?

Sec. 692.20 What must a State do to receive an allotment under this program?

(a) To participate in the State Student Incentive Grant Program, a State shall enter into an agreement with the Secretary under section 1203 of the HEA (Federal-State Relationship Agreement).

(b) For each fiscal year that it wishes to participate, a State shall submit an application that contains information that shows that its State Student Incentive Grant Program meets the requirements of Sec. 692.21.

(c)(1) Except as provided in paragraph (c)(2) of this section, the State shall submit its application through the State agency designated in its Federal-State Relationship Agreement to administer its State Student Incentive Grant Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary through a modification to the State's Federal-State Relationship Agreement, the State may submit its application under paragraph (b) of this section through an

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agency that did not administer its State Student Incentive Grant Program as of July 1, 1985.

(Authority: 20 U.S.C. 1070c-2(a))

(Cross-reference: See 34 CFR Part 604, Federal-State Relationship Agreements)

(Approved by the Office of Management and Budget under control number 1840-0544)

Sec. 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the HEA;

(b) Provides assistance only to students who meet the eligibility requirements in Sec. 692.40;

(c) Provides that assistance under this program to a full-time student will not be more than $5,000 for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves;

(Cross-reference: See Sec. 692.41.)

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in accordance with paragraph (d) of this section;

(f) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution of higher education, a reasonable portion of the State's allocation must be awarded to those students;

(h) Provides that—

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year; and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under this program represents an additional amount for grants and work-study jobs for students attending institutions of higher education over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under this program;

(i) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years;

(j) Provides that, to the extent practicable, the proportion of the funds awarded to independent students in the SSIG Program shall be the same proportion of funds awarded to independent students as is in the State program or programs of which the State's SSIG Program is a part; and

(k) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(Authority: 20 U.S.C. 1070c-2)

(Approved by the Office of Management and Budget under control number 1840-0660)

Note: Section 692.21 amended January 28, 1994, effective date not known.

Subpart D-How Does a State Administer Its Community Service-Learning Job Program?

Sec. 692.30 How does a State administer its community service-learning job program?

(a)(1) Each year, a State may use up to 20 percent of its allotment for a community service-learning job program that satisfies the conditions set forth in paragraph (b) of this section.

(2) A student who receives assistance under this section must receive compensation for work and not a grant.

(b)(1) The community service-learning job program must be administered by institutions of higher education in the State.

(2) Each student employed under the program must be employed in work in the public interest by an institution itself or by a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the agency or organization.

(c) Each community service-learning job must—

(1) Provide community service as described in paragraph (d) of this section;

(2) Provide participating students community service-learning opportunities related to their educational or vocational programs or goals;

(3) Not result in the displacement of employed workers or impair existing contracts for services;

(4) Be governed by conditions of employment that are considered appropriate and reasonable, based on such factors as type of work performed, geographical region, and proficiency of the employee;

(5) Not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; and

(6) Not pay any wage to a student that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938.

(d) For the purpose of paragraph (c)(1) of this section, "community service" means direct service, planning, or applied research that is—

(1) Identified by an institution of higher education through formal or informal consultation with local nonprofit, governmental, and community-based organizations; and

(2) Designed to improve the quality of life for residents of the community served, particularly low-income residents, in such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(e) For the purpose of paragraph (d)(2) of this section, "low-income residents" means—

(1) Residents whose taxable family income for the year before the year in which they are scheduled to receive assistance under this part did not exceed 150 percent of the amount equal to the poverty level determined by using criteria of poverty established by the United States Census Bureau; or

(2) Residents who are considered low-income residents by the State.

(Authority: 20 U.S.C. 1070c-2, 1070-4)

Subpart E-How Does a State Select Students Under This Program?

Sec. 692.40 What are the requirements for student eligibility?

To be eligible for assistance, a student must—

(a) Meet the relevant eligibility requirements contained in 34 CFR 668.7; and

(b) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary.

[Authority: 20 U.S.C. 1070c-2, 1091]

(Approved by the Office of Management and Budget under control number 1840-0544.)

Sec. 692.41 What standards may a State use to determine substantial financial need?

(a) A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use—

(1) A system for determining a student's financial need under part F of title IV of the HEA;

(2) The State's own needs analysis system if approved by the Secretary; or

(3) A combination of these systems, if approved by the Secretary.

(b) The Secretary generally approves a need-analysis system under paragraph (a)(2) or (3) of this section only if the need-analysis system applies the term "independent student" as defined under section 480(d) of the HEA. However, for good cause shown, the Secretary may approve, on a case-by-case basis, a State's need analysis system that uses a definition for "independent student" that varies from that term as defined in section 480(d) of the HEA.

(Authority: 20 U.S.C. 1070c-2.)

[FR Doc. 87-27317 Filed 11-25-87; 8:45 am]

Note: Section 692.41 amended January 28, 1994, effective date not known.

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federal register

Tuesday
January 4, 1994

Part VI

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840-AC05

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final standards, criteria, and procedures.

SUMMARY: The Secretary of Education issues standards, criteria, and procedures governing the Federal Direct Student Loan (Direct Loan) Program in the academic year beginning July 1, 1994.

These standards, criteria, and procedures govern the Federal Direct Stafford Loans Program, the Federal Direct Unsubsidized Stafford Loans Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: The standards, criteria, and procedures in this notice are effective on January 4, 1994, with the exception of §§ 685.204, 685.206, 685.301, 685.302, 685.303, 685.304, and 685.308. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to, and approved by, the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these sections, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB-3), Washington, DC 20202-5162. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized to begin in July 1994 by the Higher Education Amendments of 1992 (Pub. L. 102-325).

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives participated in regional meetings at various locations around the country in which members of the higher education community including representatives of colleges, universities, proprietary schools, and educational associations were consulted. The Secretary's representatives have also met with numerous national, regional, and state organizations representing the financial aid community to discuss various aspects of the Direct Loan Program. The Secretary's representatives have met with personnel from schools and financial advisors to assist in the development of the software that will be used by Direct Loan Program schools. In addition, the notice is based in part on final regulations for the direct loan demonstration program in 34 CFR part 685 that were published in the Federal Register on July 2, 1993 (58 FR 36088), following the publication of a notice of proposed rulemaking and consideration of public comment. The Secretary believes that participating schools' familiarity with those regulations will ease the burden of their participation in the Direct Loan Program.

This notice establishes the policies and procedures necessary for schools to implement the Direct Loan Program and most of the policies and procedures relating to borrowers in the Direct Loan Program. The Secretary anticipates publishing another notice in the spring of 1994 to govern repayment of loans for the 1994-1995 academic year and establish standards and procedures relating to Federal Direct Consolidation Loans.

I. Background

On September 10, 1993, the Secretary published a notice in the Federal Register (58 FR 47816) soliciting applications from schools for participation in the Direct Loan Program. Over 1,100 schools responded to that invitation. The Secretary selected 104 schools, representing approximately five percent (5%) of the total Federal Family Education Loan Program (FFEL) loan volume, to participate in the Direct Loan Program for the academic year beginning July 1, 1994. The rules in this notice are applicable for the period beginning July 1, 1994, and ending June 30, 1995. As required by statute, program regulations for the Direct Loan Program in future years will be developed through the use of a negotiated rulemaking process to the extent practicable.

II. Participation

Schools may participate in the Direct Loan Program by originating loans directly, by participating in a consortium of schools that originates loans directly, or by using an alternative originator to originate loans. All schools are responsible for determining student eligibility for Direct Loan and disbursing loan proceeds to borrowers. Some schools participate in the Direct Loan Program and the FFEL concurrently, while the rest of the selected schools participate exclusively in the Direct Loan Program. Some of the schools that participate in both programs concurrently make Direct Loans available to first time borrowers only; other schools make Direct Loans available to students studying in certain divisions of the school and make FFEL loans available to their other students.

The standards and procedures in this notice are, unless otherwise noted, applicable to each participating school regardless of its method or volume of participation. As stated in the notice announcing the selection of participating schools for the 1994-95 academic year, a school may withdraw from participation within 30 days of the publication of these standards, criteria, and procedures.

III. Administrative Fee for Loan Origination

Schools and consortia that originate loans will be paid a fee to assist in meeting the costs of loan origination, including the costs associated with drawing down the funds, maintaining the Direct Loan Program account, and reconciling cash and individual loan records with the Secretary each month. The Secretary prefers that originating schools print promissory note/disclosure statements on site. To assist in compensating for the costs associated with this function, schools that print promissory notes/disclosure statements will be paid a larger fee than schools that do not print promissory note/disclosure statements.

The administrative fee is paid for borrowers for whom a first disbursement has been made and for whom the first disbursement has been reconciled with the Secretary. For the 1994-1995 academic year, the program-wide average administrative fee may not exceed $10 per borrower. The Secretary will notify schools that originate loans

of the actual fee schedule and payment procedures when they are determined.

This fee structure is applicable to the first year of the program only and is likely to be restructured through the negotiated rulemaking process and when additional data are available.

IV. Making Direct Loans

Beginning with the 1994–95 academic year, all student applications for Federal student aid, including Direct Loans, will be processed by the Central Processor System (CPS). The school will receive an official output from the CPS in the form of a Student Aid Report (SAR) or an Electronic Student Aid Report (ESAR). The ESAR output may be on tapes, cartridges, or rosters. With this official output, the school will be able to assemble a financial aid award package. A school participating in the Direct Loan Program may package Direct Loans as part of the financial aid package in the same manner that a school participating in the FFEL Program packages FFEL Program loans.

A school in the Direct Loan Program will either originate loans or use the services for an alternative originator. A school will use an alternative originator if it chooses not to originate loans or is not eligible to originate loans. For the first year of the Direct Loan Program, the criteria for eligibility to originate were prescribed by statute. These criteria were included in the September 10, 1993 **Federal Register** notice.

A. Originating Schools

Under the Direct Loan Program, schools and consortia that originate loans must use software provided by the Secretary, or other software based on specifications provided by the Secretary, to create a loan-origination record containing the basic information necessary to make a loan. The software provided by the Secretary reformats the data received from the CPS and prompts the school to add data collected by the school, such as the type of loan, loan amount, and disbursement dates. Because schools have different needs, various options are available to schools after they generate the loan origination record. The software allows schools to computer-generate combined promissory notes/disclosure statements. Alternatively, a school could transmit the information collected by the school to the Direct Loan Program Servicer, which upon request, will print promissory notes/disclosure statements on behalf of the school and ship them to the school.

A student who accepts a Direct Loan completes a promissory note and returns it to the school; the school may not disburse Direct Loan funds without a completed promissory note.

An originating school in the Direct Loan Program requests and obtains loan funds from the Secretary using a process similar to the process for drawing down funds for other Department of Education (ED) programs. The Secretary adopted this process to ease the burden on schools participating in the Direct Loan Program. The Direct Loan Program system, however, differs from the systems used for other ED programs in two ways. First, a school transmits to ED a specific Direct Loan funding request that is separate from its funding requests for other programs. Direct Loan capital must be tracked separately and cannot be used for purposes other than making Direct Loans. The actual transmission request and subsequent electronic transfer of funds uses the same delivery process as is used for the Federal Pell Grant Program. After a request for funds is received, the Secretary uses the Automated Clearinghouse (ACH) process through the Federal Reserve Banking system to deposit funds in a school's designated bank account. Currently, this process takes between 48 to 72 hours from the school's request for funds until the school's receipt of funds.

The second difference between the Direct Loan Program system and the system used for other ED programs is that the amount of loan capital needed by the school is dependent on the eligibility of student and parent borrowers at the school. Funds for the Direct Loan Program are not limited by Congressional appropriations. As a result, there is no need for a maximum funding level to be authorized for a school in the Direct Loan Program. The Direct Loan system, however, incorporates internal fund controls to monitor school drawdown requests; these controls will flag any requests that appear excessive. The system also identifies schools that have failed to comply with program requirements. These flags result in immediate inquiry and intervention by the Secretary.

The software provided by the Secretary computes gross disbursements, loan fees, and net disbursements on the basis of the loan amounts entered by the school. A school requests the amount needed to fund net disbursements to borrowers. The Secretary expects that schools will follow the guidelines for cash management set out in The Blue Book, which is the manual of accounting, recordkeeping, and reporting requirements for postsecondary educational institutions under the federally-funded student financial aid programs. This notice requires any interest earned on funds drawn down to be returned to the Secretary. For future years, the Secretary anticipates that issues related to fiscal control and final accountability will be addressed in more detail in negotiated rulemaking.

After receiving funds from the Secretary, a school disburses funds to students by crediting their accounts at the school or by sending checks to the students. Before a school may disburse funds to a borrower, the school must ensure that it has a completed and signed promissory note. After the first disbursement is made, the school must record the actual disbursed amount and the date of each disbursement in the loan-origination record and transmit all completed loan records and promissory notes to the Secretary. The school transmits subsequent disbursement data to the Secretary as the disbursements occur.

A school is required to reconcile cash and individual loan records monthly. To reconcile cash, a school must provide documentation that the total disbursement minus cancellations, plus return of excess cash, is equal to the amount of money the school has drawn down during a one-month period by the end of the next month. For example, loan records and promissory notes for all disbursements and cancellations made in July 1994 must be transmitted to the Secretary by the end of August 1994. To reconcile loan records, a school's records must match the records of the Direct Loan Program Servicer. The software that is provided to participating schools is designed to assist schools in this reconciliation process.

B. Schools That Use an Alternative Originator

Schools that use an alternative originator transmit to the Direct Loan Program Servicer the data necessary for the Direct Loan Program Servicer to generate the combined promissory note/disclosure statement unless the school chooses to print the promissory note/disclosure statement on its premises. After the Direct Loan Program Servicer generates the promissory note/disclosure statement, it is sent to the school or to the borrower depending upon the school's established procedures. The borrower must complete the promissory note/disclosure statement and forward it as instructed to the Direct Loan Program Servicer or to the school. The Direct Loan Program Servicer must review the promissory note/disclosure statement before funds can be disbursed. If the Direct Loan Program Servicer or the school determines that the promissory

note/disclosure statement is not accurate or complete, the promissory note/disclosure statement must be correct and complete before funds can be disbursed. The Direct Loan Program Servicer initiates drawdown of funds to the school based on the completed promissory note/disclosure statement. The school also receives a roster from the Direct Loan Program Servicer identifying each borrower, the disbursement date and amount to be disbursed for each borrower, and the total amount of funds received by the school. Schools that use alternative origination are still responsible for reporting actual disbursement data, reconciling cash, and returning funds that are not used or for which the borrower is not eligible.

In short, the procedures used by a school that uses alternative origination differ in two ways from the procedures of originating schools. The first is that a school under alternative origination may choose to designate the alternative originator as the manager of promissory note/disclosure statements. The second is that a school under alternative origination does not manage the funds draw down process; instead, the school receives funds drawn down by the alternative originator only for those completed promissory notes in the possession of the alternative originator.

The Secretary anticipates that issues related to participation of alternative originators in future years will be subject to the negotiated rulemaking process.

C. Federal Direct PLUS Loans

Federal Direct PLUS loans are made through a process similar to the one used in the Federal PLUS loan program. The parent obtains a combined application/promissory note from the school and, after completing the combined application/promissory note, sends it to the school. The school completes the school section of the application/promissory note and forwards it to the Direct Loan Program Servicer where data from the note is key entered and a credit check is performed. Alternatively, a school enters data from the note using the software provided by the Direct Loan Program Servicer and electronically forwards this information to the Direct Loan Program Servicer. In either case, the Direct Loan Program Servicer performs a credit check to determine, as required by section 428B(a) of the HEA, whether the parent has an adverse credit history and notifies the school and the parent of the results. If the loan is approved, the Direct Loan Program Servicer sends a disclosure statement to the parent. If the credit check indicates an adverse credit history, the Secretary advises the parent of available options; for example, the parent could obtain an endorser without an adverse credit history. If the loan is approved and the school originates loans, the school may draw down money and disburse loan funds in the same manner as it would for other loans made under the Direct Loan Program. If the school does not originate loans, the alternative originator electronically transmits the funding request for the school based on the application/promissory notes that the Direct Loan Program Servicer holds for that school.

V. Loan Servicing

The Secretary is responsible for servicing and collecting Direct Loans. As noted above, a notice specifically concerned with repayment and collection will be published shortly.

A school's interaction with the Direct Loan Program Servicer during the servicing and collection of the loan is similar to the interaction schools currently have with lenders and guaranty agencies in the FFEL Program. Schools must respond to periodic student status confirmation requests as well as to *ad hoc* requests for information regarding borrowers from the Direct Loan Program Servicer.

Borrowers who default on Direct Loans are added to ED's debt collection system and are subject to all legally authorized default-collection activities.

VI. Impact of Other Rules

Many of the provisions of the FFEL Program that are applicable to the Direct Loan Program have been incorporated into this notice of standards, criteria, and procedures. The Secretary adopted those provisions because schools are familiar with them from their participation in the FFEL Program. Certain policies and procedures currently being developed through negotiated rulemaking for FFEL Program regulations will be adopted in the Direct Loan Program, including policies relating to borrower forgiveness for students who attended schools that have closed or whose eligibility was falsely certified and policies controlling the deferment for economic hardship.

VII. Summary of Contents

A. Subpart A—Purpose and Scope

Subpart A contains descriptions of the types of loans that will be made, the entities involved, and the definitions used in the Direct Loan Program.

B. Subpart B—Borrower Provisions

Subpart B contains conditions of borrower eligibility, which are identical to the borrower eligibility provisions in the FFEL Program. The charges for which borrowers are responsible, loan limits, deferment and forbearance options, and borrower defenses to repayment are also included. The Student Loan Reform Act of 1993 eliminated the Federal Supplemental Loans for Students (SLS) program but increased the loan limits for the Unsubsidized Stafford Program beginning July 1, 1994. The Higher Education Technical Amendments of 1993 further revised the loan limits. The revised loan limits are included in this notice along with a chart (Appendix A) which illustrates the loan limits that will be applicable as of July 1, 1994.

C. Subpart C—Requirements, Standards, and Payments for Schools in the Direct Loan Program

Subpart C contains those provisions governing a school's participation in the Direct Loan Program, including disbursement procedures, entrance and exit counseling, withdrawal procedures, recordkeeping and funds control requirements. The Secretary anticipates that schools will continue with the conscientious efforts demonstrated in the FFEL Program in tailoring the counseling to the borrower's particular needs and making counseling accessible. These efforts have included, for example, sign language interpreters for hearing impaired borrowers or translations for limited English proficient borrowers.

Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the standards, criteria, and procedures in this notice.

The potential costs associated with the contents of this notice are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Secretary has determined that the benefits of these standards, criteria, and procedures justify the costs.

The Secretary has also determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The contents of this notice are consistent with the requirements of the

HEA and promote the President's priorities.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, Public Law 103–66 requires that the Secretary publish a notice in lieu of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act. While the Secretary has consulted with members of the higher education community in the development of this notice, the statutory timeframe for the program does not permit the solicitation of further public comment. A public comment period, while helpful, would seriously delay the provision of necessary guidance for the operation of the Direct Loan Program. Therefore, the Secretary finds that solicitation of public comments would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: December 27, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary revises part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—STANDARDS, CRITERIA, AND PROCEDURES FOR THE DIRECT LOANS PROGRAM

Subpart A—Purpose and Scope

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (Direct Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at postsecondary schools. This part governs the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program for the academic year beginning July 1, 1994. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford Loan Program, which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students. The borrower is responsible for the interest that accrues during any period.

(b) The Secretary makes a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct PLUS loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of education at the school.

(2) The Secretary has the authority to permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR part 600 and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loans under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan programs. A parent of an eligible dependent student may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (Direct Loan Program)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal-State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Independent student
Parent
State
U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association

Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan (FISL) Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Totally and permanently disabled
Undergraduate student

(b) The following definitions also apply to this part:

Alternative originator: An entity that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not have an agreement with the Secretary to originate loans.

Direct Loan Program borrower: An individual to whom a Direct Loan is made.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Direct Loan Program school: A school that has an agreement with the Secretary under § 685.300 to participate in the Direct Loan Program.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or by applying the proceeds to the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a Direct Loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the school on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the loan fee for the loan;

(4) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(5) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(7) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a period of enrollment, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants, and to the extent funding is available, campus-based aid the student would be expected to receive if the student has applied or will apply for that aid; and

(viii) In the case of a Federal Direct PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Federal Direct Stafford loan, Federal Pell grant, and campus-based aid that the student has been or will be awarded.

(ix) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior Federal or conventional student loan was received, the amount of loan proceeds withheld by the Secretary, lender, or guaranty agency making or insuring the loan if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Federal Direct PLUS loan amounts; and

(B) Private and State-sponsored loan program loan amounts; and

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Federal Direct PLUS Program: A loan program authorized by title IV, part D of the Act that provides loans to parents of undergraduate students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Unsubsidized Stafford Loan Program: A loan program authorized by title IV, part D of the Act

that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program. The interest that accrues during all periods is paid by the borrower.

Grace period: The period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student enrolled in a school that is participating in the FFEL Program or the Direct Loan Program and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Originating school: A school that has an agreement with the Secretary under § 685.300(b) to originate loans in the Direct Loan Program. An originating school requests and obtains funds to originate Direct Loans using a draw down process similar to the process for drawing down funds for other federal student aid programs.

Period of enrollment: The period for which a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term (*i.e.*, semester trimester, quarter, academic year, and length of the program of study), established by the school, for which institutional charges are generally assessed. The period of enrollment is also referred to as the loan period.

Repayment period: (1) For a Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan, the period beginning on the date following the expiration of the grace period and ending when the loan is paid-in-full, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct PLUS loan, the period that begins on the date the loan is fully disbursed and ends when the loan is paid-in-full, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. The making of six consecutive voluntary on-time full monthly payments on a defaulted loan to regain further eligibility for Direct Loan Program loans. The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. On-time means a payment made within fifteen days of the scheduled due date and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A contains general information regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions that apply to borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements that apply to schools in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—Borrower Provisions

§ 685.200 Borrower eligibility.

(a)(1) *Student borrower*. A student is eligible to receive a Federal Direct Stafford Loan, or a Federal Direct Unsubsidized Stafford Loan, or a combination of such loans, if the student is enrolled in a Direct Loan Program school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford or Federal Direct Unsubsidized Stafford Loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii)(A) Reaffirms any FFEL Program or Direct Loan Program amount that previously was cancelled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off.

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan;

(iii)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that any Direct Loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(iv) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(v) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) *Special conditions for Federal Direct Stafford Loan borrowers*.

(i) A Federal Direct Stafford loan borrower must demonstrate financial need in accordance with title IV, part F of the act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower*. A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirements of paragraphs (a)(1)(ii) and (a)(1)(iii) of this section; and

(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history.

(ii) For purposes of paragraph (b)(7)(i) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(A) Is 90 or more days delinquent on any debt;

(B) Has been the subject of a default determination on any debt; or

(C) Has been the subject of a bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment or write-off of a Title IV debt during the five years preceding the date of the credit report.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Federal Direct Unsubsidized Loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a loan period to replace the expected family contribution for that loan period.

(d) *Defaulted FFEL Program borrower.* In the case of a student, or parent, borrower who is currently in default on an FFEL Program loan, the borrower must make satisfactory repayment arrangements on the defaulted loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Obtaining a loan.

(a) *Application for a Federal Direct Stafford loan.* To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit the student's loan origination record to the alternative originator, which will complete the origination of the loan.

(b) *Application for a Federal Direct Unsubsidized loan.* To obtain a Federal Direct Unsubsidized loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Unsubsidized Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit a student's loan origination record to the alternative originator, which will complete the origination of the loan.

(c) *Application for a Federal Direct PLUS loan.* To obtain a Federal Direct PLUS loan, the parent shall complete an application/promissory note and submit it to the school. After the school completes its portion of the application/promissory note, the school submits it to the Secretary. If the parent does not have an adverse credit history an originating school shall complete the origination of the loan. If the student for whom the loan is intended is attending a school that uses an alternative originator, the alternative originator will complete the origination of the loan.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate under the Federal Direct Stafford Loan Program and the Federal Direct Unsubsidized Stafford Loan Program.* For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans, the interest rate, during any twelve month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed 8.25 percent.

(2) *Interest rate under the Federal Direct PLUS Program.* The interest rate on a Federal Direct PLUS loan, during any 12-month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed nine percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the date the repayment period begins;

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct Unsubsidized Stafford Loan Program and the Federal Direct PLUS Program, the Secretary requires the borrower to pay on a monthly or quarterly basis, or may capitalize on a quarterly or less frequent basis, interest that has accrued during periods of deferment.

(4) For a borrower who is in a period of deferment, a mandatory forbearance, or the in-school or grace period on a Federal Direct Unsubsidized Stafford Loan and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) *Loan Fee for Federal Direct Stafford, Federal Direct Unsubsidized Stafford, and Federal Direct PLUS loans.* The Secretary—

(1) Charges a borrower a loan fee on a Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan of four percent of the principal amount of the loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within ten days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provisions of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan Program loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.203 Loan limits.

(a) *Federal Direct Stafford Loan Program.* (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for a program of study of at least a full academic year in length;

(ii) $1,750 for a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a dependent undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $3,500 for a program of study of at least a full academic year in length; or

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a dependent undergraduate student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, or in the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) *Federal Direct Unsubsidized Stafford Loan Program.* In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Federal Direct Unsubsidized Stafford Loan Program and Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford Loan Program or Federal Stafford Loan Program.

(c) *Additional eligibility under the Federal Direct Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraph (b), an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Federal Direct Unsubsidized Loan Program. In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine and document in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, has an adverse credit history, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal PLUS loan or Federal Direct PLUS loan does not constitute an exceptional circumstance. The additional amount that such a student may borrow under the Federal Direct Unsubsidized Stafford Loan Program, in combination with Federal Unsubsidized Stafford loans, for any academic year of study is—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.2

(d) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Federal Direct Stafford Loans and loans received under the Federal Stafford Loan Program made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Federal Direct PLUS Program annual limit.* The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(f) *Federal Direct PLUS Program aggregate limit.* The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(g) *Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan Program aggregate limits.* The total unpaid principal amount of Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, Federal Stafford Loans and Federal Unsubsidized Stafford Loans may not exceed—

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

(h) *Minimum loan interval.* The annual loan limits applicable to a student shall apply to the length of the

school's academic year as the term is used under the FFEL Program.

(i) *Treatment of Federal Direct Consolidation loans and Federal Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Federal Direct Consolidation loan or Federal Consolidation Loans counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Stafford and Federal Stafford loans; and

(2) For the Federal Direct Unsubsidized Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Unsubsidized Stafford Loan and Federal Unsubsidized Stafford loans.

(j) *Maximum loan amounts.* In no case may a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.204 Deferment.

(a) (1) A Federal Direct Stafford Loan borrower who meets the requirements described in subparagraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, and interest does not accrue.

(2) A Federal Direct Unsubsidized Stafford Loan borrower or a Federal Direct PLUS borrower who meets the requirements described in paragraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, but interest does accrue and is capitalized or paid by the borrower.

(b) A Direct Loan Program borrower is eligible for a deferment during any period during which the borrower—

(1) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending.

(2) Is pursuing—

(i) A course of study pursuant to a graduate fellowship program approved by the Secretary; or

(ii) A rehabilitation training program, approved by the Secretary, for individuals with disabilities.

(3) Not in excess of three years is seeking and unable to find full-time employment; or

(4) Not in excess of three years has experienced or will experience an economic hardship.

(c) No borrower is eligible for a deferment, or a loan made under this part while serving in a medical internship or residency program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.205 Forbearance.

(a)(1) A Direct Loan Program borrower or endorser may receive forbearance from the Secretary if the borrower or endorser is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower or endorser requests forbearance, and—

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower under § 685.200(a)(2).

(2) If payments of interest are forborne, they are capitalized.

(b) *Mandatory forbearance.* (1) *Medical or dental interns or residents.* Upon receipt of a written request and sufficient supporting documentation from a borrower serving in a medical or dental internship or residency program, the Secretary grants forbearance renewable at 12-month intervals to a borrower—

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) *Borrowers and endorsers with high debt burdens.* Upon receipt of a written request and sufficient supporting documentation from an endorser, or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (i)(1) of this section), the Secretary grants forbearance in increments of up to one year, for periods that, collectively, do not exceed three years, if the borrower or endorser—

(i) Is currently obligated to make payments on Title IV loans; and

(ii) The amount of such payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower or endorser's monthly disposable income.

(3) *Borrowers and endorsers in National and Community Service.* Upon receipt of a written request and sufficient supporting documentation from a borrower or endorser serving in a national service position for which the borrower or endorser receives a national service educational award under the National and Community Service Trust Act of 1993, the Secretary grants forbearance for the duration of the borrower's or endorser's term of service under that statute.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation loan or Federal Direct Consolidation loan used to discharge a Federal Stafford, Federal PLUS loan, Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in address during enrollment.

(c) *Borrower defenses.* A Direct Loan Program borrower may assert as a defense against the repayment of the loan a claim based on the act or omission of the school only if—

(1) The act or omission gives rise to a cause of action against the school recognized under the law of the State in which the school attended by the student was located;

(2) Prior to asserting the claim as a defense to repayment, the borrower presented that claim to the school and received no satisfaction; and

(3) The borrower presented the claim in writing to the Department within 18 months of the date the loan was disbursed to the borrower.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) (1) *General.* Participation of a school in the Direct Loan Program means that the school's students are eligible to receive Direct Loans. To participate in the Direct Loan Program, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations including notices;

(ii) The Student Assistance General Provisions, 34 CFR part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR part 600.

(b) (1) In the participation agreement, the school shall agree to—

(i) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(ii) Estimate the need of each of these students as required by part F of the Act for an academic year, except that any loan obtained by a student under this part with the same terms as Federal Direct Unsubsidized Stafford Loans, or Federal Direct PLUS Loans, or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(iii) Provide a statement that certifies the eligibility of any student to receive a loan under part D of the Act is not in excess of the annual or aggregate limit applicable to the loan;

(iv) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act; and;

(v) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—

(A) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school and concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(B) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(2) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(3) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) Provide that students at the school and their parents will be eligible to participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that a student or parent may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment;

(5) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(6) Provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act, or any benefits associated with such loan; and

(7) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* A school or consortium that originates loans in the Federal Direct Student Loan Program must have a supplemental agreement that—

(1) Provides that the institution or consortium will originate loans to eligible students and parents in accordance with part D of the Act; and

(2) Provide that the note or evidence of obligation on the loan is the property of the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.301 Certification by a Direct Loan Program school for a loan.

(a)(1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.200 and § 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) A school may not certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford Loan, the borrower's expected family contribution for that period.

(4) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with § 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be at least 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

(i) *Number of clock-hours in program* ÷ 900 hours; or

(ii) *Credit hours in program* ÷ 24 semester or 36 quarter hours.

(5) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with § 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be less than 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

Number of weeks in program ÷ 30 weeks.

(6) A school may refuse to certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, sex, color, religion, national origin, age, disability status, or income.

(7) A school may not assess a fee for the completion or certification of any Direct Loan Program loan forms or information.

(b) *Disbursing a loan.* (1) Before disbursing a loan, a school must determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) A school shall establish disbursement dates for any Direct Loan Program loan as follows:

(i) Disbursements must be in two or more installments;

(ii) No installment may exceed one-half the loan; and

(iii) At least one-half of the loan period must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(c) *Promissory note.* (1) The Secretary provides promissory notes for use in the Direct Loan Program and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall provide to the Secretary an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.302 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.303 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) A school may not disburse any loan proceeds unless the school or the alternative originator has obtained an executed legally enforceable promissory note from the borrower.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs or the Direct Loan Program, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(3) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(4) A school may not deliver loan proceeds to a student borrower earlier than ten days before the first day of the period of enrollment.

(5) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school, within 30 days of the period described in § 685.304(b), shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(6) A school may not apply the first disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to the account of a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan until 30 days after the first day of the student's program of study.

(c) *Processing of the proceeds of a Direct Loan Program loan.* (1) After the student has registered, the school shall—

(i) Not more than three weeks prior to the first day of the period of enrollment—

(A) Credit the amount of the loan proceeds to the student's account;

(B) Notify the student or parent borrower in writing that it has so credited that account; and

(C) Deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (b)(5) of this section, not later than 45 days after the disbursement of the funds.

(ii) Subject to paragraph (b)(5) of this section, disburse the loan proceeds to the borrower.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 685.304(c).

(d) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the loan period; or

(ii) Before the end of the loan period, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if the school or the alternative originator has received a completed promissory note prior to the 30th day after the applicable condition in paragraph (d)(1) of this section.

(3) Notwithstanding paragraph (d)(2) of this section, a school may not make—

(i) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(ii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(e) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct Unsubsidized Stafford borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan made to a borrower who has not received a Federal Stafford loan for attendance at the school and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports, garnishment of wages, and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(f) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Federal Direct Stafford, or Federal Direct Unsubsidized Stafford borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of students who have obtained Federal Direct Stafford or Federal Direct Unsubsidized Stafford loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., standard repayment plan, extended repayment plan, graduated repayment plan, income contingent repayment plan, loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (e)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain cancellation of a loan;

(vii) Require the borrower to provide corrections to the institutions's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that must be provided within 60 days to the Secretary.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (e) and (f) of this section as to that borrower.

(g) *Treatment of excess loan proceeds.* Before the delivery of any Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct Unsubsidized Stafford, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under § 685.305.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) Forty-five days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30

days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) Twenty-five days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 685.302. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Payment of a refund to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a Direct Loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR Part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 685.304(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 685.304(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.306 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may submit a written request to the Secretary to withdraw from participation in the Direct Loan Program explaining why it seeks to withdraw.

(b) The Secretary reviews the school's request to determine if the school has the ability to administer the Direct Loan Program properly and notifies the school of his decision to approve or disapprove the request within 30 days of receiving the school's request.

(c) In reviewing a school's request, the Secretary considers whether the reasons for the request apply only to participation in the Direct Loan Program or to participation in either the Direct Loan Program or the FFEL Program.

(d) If a school's request is approved by the Secretary, the withdrawal becomes effective on the first of July following the school's request.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Remedial actions.

(a) *General.* The Secretary requires a school to purchase that portion of a Direct Loan that is unenforceable, or that the borrower was ineligible to receive. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in § 685.300.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions;

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct Unsubsidized Stafford, and Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.102;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan under § 685.200, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(i) The date the school received a completed promissory note from the borrower; and

(ii) The date of each disbursement of the loan.

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department of Education Office of Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any information deemed relevant by the Secretary;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan has changed his or her permanent address, the school shall notify the Secretary within 30 days thereafter.

(g)(1) *Accounting requirements.* A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending Direct Loan Program funds in accordance with generally accepted accounting principles.

(h)(1) *Direct Loan Program bank account.* The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for Direct Loan Program funds. The school shall notify the bank where the Direct Loan Program account is located in writing that the Direct Loan Program account contains Federal funds. In addition, the school must provide that the word "Federal" is in the name of the school's Direct Loan Program account. If the school's accounting system and practices meet the requirements of paragraph (g) of this section, the school's Direct Loan Program account need not be a separate bank account. The Secretary reserves the right to require a school to maintain a separate account for the Direct Loan Program.

(2) Any interest earned on Direct Loan Program funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) A school shall divide the functions of authorizing payments and disbursing funds to borrowers so that no single office has responsibility for both functions under the Direct Loan Program.

(j) Funds received by a school under this part may be used only to make Direct Loan Program loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(k) The Secretary may take any action that he deems appropriate to protect the Federal fiscal interest, including such actions as requiring that a school that

originates Direct Loans use an alternative originator instead.

(Authority: 20 U.S.C. 1087a *et seq.*)

APPENDIX A TO PART 685.—NEW LOAN MAXIMUMS AS OF JULY 1, 1994

Direct Loan Program and FFEL Program

Academic level	Sub./Unsubsidized Federal Stafford loans	Additional unsubsidized eligibility
1 Annual Limits		
First Year Student:		
Full academic year	$2,625	$4,000
⅔ academic year	1,750	2,500
⅓ academic year	875	1,500
Second Year Student		
Full academic year	3,500	4,000
⅔ academic year	(1)	2,500
⅓ academic year	(1)	1,500
Third Year Student and Beyond:		
Full academic year	5,500	5,000
Less than academic year	Prorated	Prorated
Graduate or Professional Student	8,500	10,000
Aggregate Limits:		
Undergraduate	$46,000	
Graduate	138,500	

1 Prorated for less than academic year.

Notes: For independent students or dependent students whose parents cannot borrow under the PLUS program, the amount a student can borrow under the unsubsidized loan program during any academic year is: (A) the Stafford loan limits *plus*; (B) first 2 years $4,000 per year; (C) remainder of undergraduate program $5,000 per year; (D) Graduate $10,000 per year.

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Part III

Department of Education

34 CFR Part 644

Educational Opportunity Centers Program; Final Rule and Notice Inviting Applications

DEPARTMENT OF EDUCATION

34 CFR Part 644

RIN 1840-AB65

Educational Opportunity Centers

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Educational Opportunity Centers program. The Educational Opportunity Centers program is authorized under title IV of the Higher Education Act of 1965 (HEA), and these final regulations implement changes made to the HEA by the Higher Education Amendments of 1992. In addition to incorporating statutory changes, the regulations also clarify and simplify requirements governing the program and revise one funding criterion.

The purposes and allowable activities of the Educational Opportunity Centers program support the National Education Goals. Specifically, the program funds projects designed to improve the academic competency of program participants (Goal #3).

DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write to the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

Applicability: The criteria listed under § 644.22 will apply on and after June 1, 1994. Until June 1, 1994, the existing criteria will continue to apply.

FOR FURTHER INFORMATION CONTACT: Margaret A. Wingfield, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202-5249. Telephone: (202) 708-4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the Higher Education Amendments of 1992 (Pub. L. 102-325, enacted July 23, 1992). The Educational Opportunity Centers program provides grants to institutions of higher education; public and private agencies and organizations; combinations of institutions, agencies, and organizations; and secondary schools under special circumstances. The purposes of the program are to (1) provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education; and (2) assist individuals in applying for admission to institutions that offer programs of postsecondary education, including preparing necessary applications for use by admissions and financial aid officers.

On October 26, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 57704). The NPRM included a summary of regulations proposed to implement statutory changes and other regulations proposed to clarify and simplify requirements governing the program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 45 persons submitted comments on the proposed regulations. An analysis of the comments and the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The major differences between the NPRM and these final regulations are as follows:

1. Section 644.21 (Selection Criteria—Plan of Operation)

The criterion listed under § 644.21(c)(5) has been modified to encourage applicants to include information about their plan to coordinate with other projects for disadvantaged students.

2. Section 644.30 (Allowable Costs)

Section 644.30 has been revised to include, as allowable costs, transportation, lodging, and meals for project participants and staff during visits to postsecondary institutions or for participation in "College Day" and career awareness activities. Also, fees for college admissions applications and college entrance examination fees are now permissible under certain circumstances.

3. Section 644.31 (Unallowable Costs)

This section has been revised to conform to the changes made in the allowable costs section.

4. Section 644.32 (Recordkeeping)

The language in § 644.32(d)(1) has been modified to lessen the recordkeeping burden on grantees.

Intergovernmental Review

This program is subject to the requirement of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 644

Colleges and Universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Secondary education.

(Catalog of Federal Domestic Assistance Number 84.066 Educational Opportunity Centers Program.)

Dated: January 10, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary revises part 644 of title 34 of the Code of Federal Regulations to read as follows:

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

Subpart A—General

Subpart B—Assurances

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met by a Grantee?

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

Subpart A—General

§ 644.1 What is the Educational Opportunity Centers program?

The Educational Opportunity Centers program provides grants for projects designed to provide—

(a) Information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education; and

(b) Assistance to individuals in applying for admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers.

(Authority: 20 U.S.C. 1070a–16)

§ 644.2 Who is eligible for a grant?

The following are eligible for a grant to carry out an Educational Opportunity Centers project:

(a) An institution of higher education.

(b) A public or private agency or organization.

(c) A combination of the types of institutions, agencies, and organizations described in paragraphs (a) and (b) of this section.

(d) A secondary school, under exceptional circumstances such as if no institution, agency, or organization described in paragraphs (a) and (b) of this section is capable of carrying out an Educational Opportunity Centers project in the target area to be served by the proposed project.

(Authority: 20 U.S.C. 1070a–11)

§ 644.3 Who is eligible to participate in a project?

(a) An individual is eligible to participate in an Educational Opportunity Centers project if the individual meets all of the following requirements:

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident;

(iv) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

(2)(i) Is at least 19 years of age; or

(ii) Is less than 19 years of age, and the individual cannot be appropriately served by a Talent Search project under 34 CFR part 643, and the individual's participation would not dilute the Educational Opportunity Centers project's services to individuals described in paragraph (a)(2)(i) of this section.

(3) Expresses a desire to enroll, or is enrolled, in a program of postsecondary education, and requests information or assistance in applying for admission to, or financial aid for, such a program.

(b) A veteran as defined in § 644.7(b), regardless of age, is eligible to participate in an Educational Opportunity Centers project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.4 What services may a project provide?

An Educational Opportunity Centers project may provide the following services:

(a) Public information campaigns designed to inform the community about opportunities for postsecondary education and training.

(b) Academic advice and assistance in course selection.

(c) Assistance in completing college admission and financial aid applications.

(d) Assistance in preparing for college entrance examinations.

(e) Guidance on secondary school reentry or entry to a General Educational Development (GED) program or other alternative education program for secondary school dropouts.

(f) Personal counseling.

(g) Tutorial services.

(h) Career workshops and counseling.

(i) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons.

(j) Activities described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Educational Opportunity Centers program stated in § 644.1.

(Authority: 20 U.S.C. 1070a–16)

§ 644.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Educational Opportunity Centers program is four years.

(b) The Secretary approves a project period of five years for applications that score in the highest ten percent of all applications approved for new grants under the criteria in § 644.21.

(Authority: 20 U.S.C. 1070a–11)

§ 644.6 What regulations apply?

The following regulations apply to the Educational Opportunity Centers program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs), except for § 75.511.

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations), except for the definition of "secondary school" in § 77.1.

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 644.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Budget period
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Private
Project
Project period
Public
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(i) Is determined to be eligible to participate in the project under § 644.3; and

(ii) Receives project services.

Postsecondary education means education beyond the secondary school level.

Potential first-generation college student means—

(i) An individual neither of whose parents received a baccalaureate degree; or

(ii) An individual who regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

Secondary school means a school that provides secondary education as determined under State law, except that it does not include education beyond grade 12.

Target area means a geographic area served by an Educational Opportunity Centers project.

Veteran means a person who served on active duty as a member of the Armed Forces of the United States—

(i) For a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable; or

(ii) After January 31, 1955, and who was discharged or released from active duty because of a service-connected disability.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1141)

Subpart B—Assurances

§ 644.10 What assurances must an applicant submit?

An applicant shall submit, as part of its application, assurances that—

(a) At least two-thirds of the individuals it serves under its proposed Educational Opportunity Centers project will be low-income individuals who are potential first-generation college students;

(b) Individuals who are receiving services from another Educational Opportunity Centers project or a Talent Search project under 34 CFR Part 643 will not receive services under the proposed project;

(c) The project will be located in a setting or settings accessible to the individuals proposed to be served by the project; and

(d) If the applicant is an institution of higher education, it will not use the project as a part of its recruitment program.

(Authority: 20 U.S.C. 1070a–16)

Subpart C—How Does the Secretary Make a Grant?

§ 644.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 644.21.

(ii) The maximum score for all the criteria in § 644.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application for a new grant to continue to serve substantially the same populations or campuses that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience in delivering services under the expiring project on the basis of the criteria in § 644.22.

(ii) The maximum score for all the criteria in § 644.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(3) The Secretary awards additional points equal to 10 percent of the application's score under paragraphs (a) (1) and (2) of this section to an application for a project in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (Palau), or the Northern Mariana Islands if the applicant meets the requirements of subparts A, B, and D of this part.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a) (1) through (3) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Educational Opportunity Centers program.

(d) The Secretary may decline to make a grant to an applicant that carried out a project that involved the fraudulent use of funds under section 402A(c)(2)(B) of the HEA.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1144a(a))

§ 644.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for an Educational Opportunity Centers project in the proposed target area on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of low-income families residing in the target area;

(2) A high number or percentage, or both, of individuals residing in the target area with education completion levels below the baccalaureate level;

(3) A high need on the part of residents of the target area for further education and training from programs of postsecondary education in order to meet changing employment trends; and

(4) Other indicators of need for an Educational Opportunity Centers project, including the presence of unaddressed educational or socioeconomic problems of adult residents in the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to each of the purposes of the Educational Opportunity Centers program stated in § 644.1;

(2) Address the needs of the target area;

(3) Are clearly described, specific, and measurable; and

(4) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (4 points) The plan to inform the residents, schools, and community organizations in the target area of the goals, objectives, and services of the project and the eligibility requirements for participation in the project;

(2) (4 points) The plan to identify and select eligible participants and ensure

their participation without regard to race, color, national origin, gender, or disability;

(3) (2 points) The plan to assess each participant's need for services provided by the project;

(4) (12 points) The plan to provide services that meet participants' needs and achieve the objectives of the project; and

(5) (8 points) The management plan to ensure the proper and efficient administration of the project including, but not limited to, the project's organizational structure, the time committed to the project by the project director and other personnel, and, where appropriate, its coordination with other projects for disadvantaged students.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which the applicant has made provision for resources to supplement the grant and enhance the project's services, including—

(1) (8 points) Facilities, equipment, supplies, personnel, and other resources committed by the applicant; and

(2) (8 points) Resources secured through written commitments from schools, community organizations, and others.

(e) *Quality of personnel* (9 points). (1) The Secretary evaluates the quality of the personnel the applicant plans to use in the project on the basis of the following:

(i) The qualifications required of the project director.

(ii) The qualifications required of each of the other personnel to be used in the project.

(iii) The plan to employ personnel who have succeeded in overcoming the disadvantages or circumstances like those of the population of the target area.

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, using specific and quantifiable measures, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for the disclosure of unanticipated project outcomes, using quantifiable measures if appropriate.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a–16)

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its expiring Educational Opportunity Centers project. This information includes performance reports, audit reports, site visit reports, and project evaluation reports.

(b) The Secretary evaluates the applicant's prior experience in delivering services on the basis of the following criteria:

(1) (3 points) (i) Whether the applicant provided services to the required number of participants who resided in the target area; and

(ii) Whether two-thirds of all participants served were low-income individuals and potential first-generation college students.

(2) (6 points) The extent to which the applicant met or exceeded its objectives regarding the provision of assistance to individuals in applying for admission to, or financial aid for, programs of postsecondary education.

(3) (6 points) The extent to which the applicant met or exceeded its objectives regarding the admission or reentry of participants to programs of postsecondary education.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a–16)

§ 644.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant beginning in fiscal year 1994 at the lesser of—

(1) $180,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 644.30 What are allowable costs?

The cost principles that apply to the Educational Opportunity Centers program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Transportation, meals, and, with specific prior approval of the Secretary, lodging for participants and staff for—

(1) Visits to postsecondary educational institutions to obtain information relating to the admission of participants to those institutions;

(2) Participation in "College Day" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields in the target area and who can serve as role models for participants.

(b) Purchase of testing materials.

(c) Fees required for college admissions of entrance examinations if—

(1) A waiver is unavailable; and

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(d) In-service training of project staff.

(e) Rental of space if—

(1) Space is not available at the site of the grantee; and

(2) The rented space is not owned by the grantee.

(f) Purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.31 What are unallowable costs?

Costs that are unallowable under the Educational Opportunity Centers program include, but are not limited to, the following:

(a) Tuition, fees, stipends, and other forms of direct financial support for participants.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a-11 and 1070a-16)

§ 644.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project at the

time that the individual is selected to participate.

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Number of participants.* In each budget period, a grantee shall serve a minimum of 1,000 participants who reside in the target area. However, the Secretary may reduce the minimum number of these participants if the amount of the grant for the budget period is less than $180,000.

(c) *Recordkeeping.* For each participant, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 644.3;

(2) The services that are provided to the participant; and

(3) The specific educational benefits received by the participant.

(d) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (d)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (d) (1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs (sections 402A through 402F of the HEA); or

(ii) Between the programs funded under sections 402A through 410 of the HEA and similar programs funded through other sources.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a-11 and 1070a-16).

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix—Analysis of Comments and Responses

The following is an analysis of the comments and changes in the regulations since the publication of the NPRM on October 26, 1993 (58 FR 57704). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes—and suggested changes that the Secretary is not legally authorized to make under applicable statutes—are not generally addressed.

How long is a project period? (§ 644.6)

Comment: One commenter suggested that the Secretary change the regulations so that a competition for Educational Opportunity Center (EOC) grants would be held once every two years. The commenter noted that such a schedule would be more efficient than a 4-year schedule and would be more fair because applicants who were not funded could reapply more quickly.

Discussion: The length of EOC project periods is prescribed in the Higher Education Act. Section 644.6 of these regulations merely reflects the statutory requirement.

Changes: None.

What selection criteria does the Secretary use? (§ 644.21)

Comment: Several commenters recommended that § 644.21(c)(5) be changed to require the Secretary to consider an applicant's plan to coordinate its EOC project with other projects that serve disadvantaged students. The commenters maintained that allotting points based on such a plan would encourage coordination among projects. Some commenters offered specific langauge suggesting that the Secretary evaluate an applicant's plan of operation based in part on "the plan, including the project's organization structure, its coordination with other programs for disadvantaged students sponsored by the sponsoring entity, and the time committed to the project by administrative and other staff, to ensure the proper and efficient administration of the project."

Discussion: The Secretary agrees that an applicant's plan to coordinate activities with other projects should be considered in the selection criteria and that such consideration will encourage coordination. However, the Secretary recognizes that in some cases an EOC project may be the only project for disadvantaged students administered by a particular institution or agency. Therefore, the Secretary has adopted much of the suggested language but has included the modifier "where appropriate" to ensure that applicants who administer only an EOC project will not be disadvantaged by their inability to coordinate with other projects.

Changes: Section 644.21(c)(5) has been changed to read: "The management plan to ensure the proper and efficient administration of the project including, but not limited to, the project's organizational structure, the time committed to the project by the project director and other personnel, and, where appropriate, its coordination with other projects for disadvantaged students."

How does the Secretary evaluate prior experience? (§ 644.22)

Comment: Many commenters suggested that the Secretary change § 644.22, relating to prior experience points. None of the commenters asked the Secretary to change the wording of the criteria; all requested that the Secretary describe in greater detail how the criteria are applied. Some commenters argued the regulations should require the Secretary to notify grantees as to the number of points they received for prior experience before the funding determinations are made. Commenters argued that such a procedure would allow grantees to "correct errors" in the Secretary's evaluation of their prior experience. Other commenters suggested that the regulations should require the Secretary to award a portion of the prior experience points each year based on a grantee's annual performance report. They suggested that each grantee should be informed within a specified period as to how well each performance report was scored.

Commenters also noted that the regulations should require the Secretary to award prior experience points based only on a grantee's performance during the first two years of its grant. This procedure, they argued, would ensure that a grantee's prior experience would be measured against actual outcomes rather than speculation about what the grantee is likely to have accomplished by the end of the project period. Several commenters offered suggestions on how prior experience points should be allocated under the two-year evaluation schedule.

Discussion: The comments suggest a high degree of anxiety over how the Secretary rates prior experience. The comments imply that the assessment process should be continuous, extensive, and interactive. The Secretary, however, has no intention of unnecessarily burdening grantees with such a process. Under § 644.20(2)(i) of the regulations, the Secretary only evaluates prior experience when a grantee submits an application for "a new grant to continue to serve substantially the same populations or campuses that the applicant is serving under an expiring grant." Prior experience is not evaluated until the Secretary receives such an application. This procedure reflects the mandate expressed in section 402(A)(c)(1) of the Higher Education Act, which states: "In making grants * * * the Secretary shall consider prior experience." The law requires the Secretary to evaluate prior experience only when the Secretary is deciding to make a grant; the Secretary only decides to make a grant if an application has been submitted. Thus, the final assessment of prior experience is conducted as part of the overall process for selecting new grants. This process begins when applications are received and ends when applicants are notified of the Secretary's funding decisions.

The application process is not an interactive process. After the closing date, no additional information is accepted or considered. Therefore, any information that an applicant feels should be considered during the course of the selection process should be provided before the closing date. The Secretary does not disclose information relating to the rank of applications until all applicants are notified of the Secretary's funding decisions. After applicants receive notification, they may request copies of documents that reflect the prior experience assessments.

Changes: None.

What are allowable costs? (§ 644.30)

Comment: Many commenters suggested that the Secretary amend § 644.30 of the proposed regulations to include college admission fees and college entrance examination fees in the list of allowable costs. The commenters noted that many adult EOC participants cannot afford to pay examination and application fees and are therefore discouraged from pursuing postsecondary education.

Discussion: The Secretary agrees that admission fees should be included in the list of allowable costs because some adult participants may be discouraged from

applying to postsecondary institutions because of the expense associated with examination and application fees. However, the Secretary strongly encourages Educational Opportunity Centers to work with higher educational institutions to secure waivers whenever possible. Further, application fees will not be an allowable cost under § 644.30 if the fee is paid to the grantee institution because the Secretary encourages grantees to provide meaningful support to the Educational Opportunity Centers that they administer.

Changes: The Secretary has changed § 644.30 so that the list of allowable costs includes fees required for college admissions applications or entrance examination fees if (1) a waiver of the fee is unavailable; and (2) the fee is paid by the grantee to a third party on behalf of a participant.

What are unallowable costs? (§ 644.31)

Comment: Many commenters requested that the Secretary remove transportation, meals, and lodging from the list of unallowable costs in § 644.31. The commenters further requested that the Secretary include transportation, meals, and lodging in the list of allowable costs in § 644.30. Several commenters argued that campus visits are necessary to help participants choose an appropriate postsecondary placement. Other commenters noted that such visits are often impossible for EOC participants who reside in rural areas. Finally, some commenters argued that transportation, meals, and lodging should be allowable costs because they are allowable under the Talent Search program.

Discussion: The Secretary believes that college visits are often necessary to help adult participants gain the confidence and insight that they need to feel comfortable in applying for college admission. The Secretary agrees with the commenters that it would be unfortunate if the cost of such visitations prevented some participants from pursuing postsecondary education. Therefore, on a case-by-case basis, transportation, lodging, and meals may be allowable costs under the circumstances described in the regulations.

Changes: The Secretary has removed transportation, lodging, and meals from the list of unallowable costs in § 644.31. The Secretary has also changed § 644.30 so that the list of allowable costs includes: "(a) Transportation, meals, and, with specific prior approval of the Secretary, lodging for participants and staff for—(1) Visits to postsecondary educational institutions to obtain information relating to the admission of participants to those institutions; (2) Participation in "College Day" activities; and (3) Field trips to observe and meet with people who are employed in various career fields in the target area and who can act as role models for participants."

What other requirements must a grantee meet? (§ 644.32)

Comment: Some commenters suggested that the Secretary should change § 644.32(d)(1) to read: "Unless a part-time director furthers coordination of the project with other programs for disadvantaged clients operated by the sponsoring institution or agency, or unless a waiver is granted, a grantee shall employ a full-time project director." The commenters argued that the change was necessary because the language in the NPRM does not reflect the intent of the 1992 Amendments to the Higher Education Act, which requires the Secretary to encourage coordination among TRIO programs and other programs for disadvantaged students and to allow for a less-than-full-time director.

One commenter recommended that the Secretary require a full-time project director at all Educational Opportunity Centers. The commenter noted that the degree of detail to which a director must be attentive requires a full-time commitment. The commenter further suggested that coordination among projects is desirable and can be accomplished when various directors work together for the mutual benefit of all projects on a single campus.

Discussion: The Secretary strongly supports coordination of EOC activities between and among projects to extent that the coordination fosters—

(1) Improved services for the EOC participants;

(2) More efficient or effective means of delivering services; or

(3) An increase in the resources available to participants.

There is no magic formula for coordination. It only occurs when all partners see it in their best interest to cooperate and coordinate activities to obtain some beneficial objectives. Projects do not have to share staff to coordinate activities. Coordination can occur in a number of ways by staff at all levels. Having a part-time director does not guarantee that coordination of activities will occur. Having a full-time director does not guarantee that the coordination of activities will not occur.

Each project is different in terms of its setting, resources, and support systems. The Secretary recognizes that a project may effectively operate with less than a full-time director if other support personnel are in place to assist in shared management duties. However, coordination can take many other forms. For example, coordination may be achieved by planning and conducting joint or cooperative field trips, lectures, career days, or test-preparation sessions. Coordination may also be achieved by sharing space or equipment.

Section 644.32(d)(1) accurately reflects both the intent of the 1992 Amendments to the HEA and the Secretary's commitment to coordination. Waivers of the requirement for a full-time director are available under § 644.32(d)(3) if an applicant can show that efforts to coordinate among projects will be hindered by not allowing one person to direct more than one project.

The Secretary believes that in many cases the size and scope of an EOC project require the attention of a full-time director. The average EOC project receives more than a million dollars over the course of a project period and serves more than eight thousand participants. Given the size and scope of EOC projects, the Secretary believes that the appropriateness of allowing a part-time director must be evaluated with great care.

Changes: None.

Comment: Several commenters suggested that the Secretary should change § 644.32(c)(3), relating to records of educational benefits. The commenters requested that the Secretary eliminate the phrase "the specific educational benefits to the participants that resulted from the services" because keeping a record of how each participant benefited from the services would be too burdensome. The commenters suggested that § 644.32(c)(3) require only that grantees keep a record of "the specific educational benefits *received* by the participant."

One commenter suggested that the Secretary should not change the recordkeeping requirement in § 644.32(c)(3) because it formed the basis for collecting valuable statistics.

Discussion: The Secretary agrees that the phrase "that resulted from the services" implies that a grantee must demonstrate and record a causal relationship between services and benefits. The Secretary believes that such a record is not necessary to indicate a benefit, particularly in instances where the services provided can be deemed to be benefits in and of themselves.

Changes: The recordkeeping requirement at § 644.32(c)(3) is changed to read "the specific educational benefits received by the participant."

[FR Doc. 94–903 Filed 1–14–94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.066]

Educational Opportunity Centers; Notice Inviting Applications for New Awards for FY 1994

Purpose of Program: To provide grants to permit applicants to conduct projects designed to: (1) Provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and (2) assist individuals to apply for admission to institutions that offer programs of postsecondary education. This program supports the National Education Goals. Specifically, the program funds projects designed to increase education opportunities for adults (Goals 5).

Eligible Applicants: Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies and organizations, and, in exceptional cases, secondary schools, such as if no other applicants are capable of providing an Educational Opportunity Centers project in the proposed target area.

Deadline for transmittal of applications: March 14, 1994.

Deadline for intergovernmental review: May 13, 1994.

Applications available: January 28, 1994.

Available funds: $22.5 million.

Estimated range of awards: $180,000–$750,000.

Estimated average size of awards: $346,000.

Estimated number of awards: 65.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 60 months.

Budget period: 12 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 644, as published in this same issue of the Federal Register.

For applications or information contact: Margaret Wingfield, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, Washington, DC 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–16.

Dated: January 4, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–904 Filed 1–14–94; 8:45 am]

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federal register

Wednesday
March 16, 1994

Part VII

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB90

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing student eligibility under the Higher Education Act of 1965, as amended (HEA). The regulations implement certain new provisions of the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993 that pertain to student eligibility. The regulations also make technical corrections to the final regulations published in the **Federal Register** on June 8, 1993 with regard to the applicability of § 668.7(a)(1) to specific programs set forth in title IV of the HEA (title IV, HEA). The purpose of the regulations is to reduce the potential for abuse in the programs authorized under the title IV, HEA programs by improving the accuracy of the information used to assess a student's eligibility for these programs. The regulations also clarify the Secretary's policy with regard to the eligibility of incarcerated students, students studying abroad, and students enrolled in telecommunications or correspondence courses.

EFFECTIVE DATE: Subject to meeting the requirements of section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)), these regulations take effect on July 1, 1994. When these regulations become effective, they govern student eligibility for any title IV, HEA program assistance that may be awarded to any student for award years beginning with 1994–95.

FOR FURTHER INFORMATION CONTACT: Claude Denton, Program Specialist, Student Eligibility and Verification Section, General Provisions Branch, Division of Policy Development, U.S. Department of Education, 400 Maryland Avenue SW., (ROB–3, Room 4318), Washington, DC 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that apply to all institutions that participate in the title IV, HEA student financial assistance programs. The title IV, HEA student financial assistance programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan (Direct Loans), State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. The last three programs are known collectively as the "campus-based programs."

These regulations implement portions of the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992. Regulatory implementation of this statute revises the Student Assistance General Provisions (34 CFR part 668), which apply to all students seeking assistance under the title IV, HEA programs. These revisions seek to improve the efficiency of the title IV, HEA programs and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

Waiver of Rulemaking

On June 8, 1993, the Secretary published final regulations in the **Federal Register**, 58 FR 32188, that implement statutory changes, make technical modifications, and enhance program integrity in the title IV, HEA programs. As published, § 668.7(a)(1) of those regulations incorrectly states that an otherwise eligible student who is enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program is eligible to receive assistance under the Stafford Loan, PLUS, SLS, FWS, Federal Perkins Loan, or FDSL programs. Under section 484(b)(3) of the HEA, as amended by the Higher Education Technical Amendments of 1993 (Technical Amendments)(Pub. L. 103–208, enacted December 20, 1993), this student would be eligible to receive assistance under the Stafford Loan, PLUS, SLS or FDSL programs only.

In addition, the Higher Education Amendments of 1992 amended section 484(b)(4) of the HEA to provide that an otherwise eligible student, who is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, is now eligible to receive assistance under the FWS, Federal Perkins Loan, or FDSL programs in addition to funds under the Stafford Loan, PLUS, or SLS programs. Section 668.7(a)(1) has been corrected to reflect the applicable statutory requirements. Until the effective date of these regulations, the statutory requirements of section 484(b) (3) and (4) of the HEA supersede § 668.7(a)(1) as published in the June 8, 1993 final regulations.

For purposes of this rulemaking, the Technical Amendments also exempt students from three Pacific Island republics from the requirement of providing social security numbers as a condition of eligibility for title IV, HEA assistance. In addition, the Technical Amendments provide for institutional authority to determine that a social security number is correct without the need for a subsequent review by the Secretary. In accordance with these statutory changes, §§ 668.7(a)(16) and 668.7(i) have been revised, respectively.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory requirements into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Major Issues

On October 4, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 51712). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Amendment to General Definitions contained in § 668.2 to add a definition of the term "output document" to ensure consistent use of the term throughout part 668 (page 51713);

Addition of provisions for a data match with the Selective Service System and providing that a confirmation of Selective Service registration on the student's application output document that is submitted to the institution fulfills the Selective Service registration requirement (page 51713);

Addition of a provision making incarcerated students ineligible to receive assistance under the Federal Family Education Loan, Federal Direct Student Loan, and Federal Perkins Loan programs (page 51713);

Addition of a provision requiring a student, as a condition of eligibility for title IV, HEA assistance, to provide a social security number (page 51714);

Addition of provisions for a data match with the Social Security Administration to verify the accuracy of social security numbers provided by students and institutional requirements related to this verification (pages 51714–51715);

Addition of a provision making a student ineligible to receive title IV, HEA assistance for a correspondence course unless the course is part of a program leading to an associate, bachelor's, or graduate degree (page 51715);

Addition of a provision establishing a methodology for calculating the percentage of telecommunications and correspondence courses delivered by the institution for the purpose of determining whether the total number of telecommunications and correspondence courses exceeds 50 percent of all courses offered (page 51715); and

Addition of a provision clarifying that if a program of study abroad is approved for credit by the home institution at which a student is enrolled, the otherwise eligible student is eligible to receive title IV, HEA assistance without regard to whether the study abroad program is required as part of the student's degree program (pages 51715–51716).

Section 668.7(i) has been revised, in response to public comments, to provide for institutional verification of a student's social security number if the institution has information that conflicts with the Secretary's initial determination that the student's social security number is accurate.

The Technical Amendments redesignated several provisions of HEA section 484 and, accordingly, several references to that statutory provision in these regulations have been revised.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 31 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Section 668.7 Eligible Student

Selective Service Registration Status

Comments: Several commenters supported the provision for a data match with the Selective Service System and the provision that a confirmation of Selective Service registration on the student's output document that is submitted to the institution fulfills the requirement to file a separate statement of compliance. One commenter recommended a waiver of the Statement of Registration Status when a student presents other documentation from the Selective Service System proving registration. One commenter questioned the need for a 30-day period for the student to collect and submit documentation to the institution to support his claim of registration or exemption from registration, and suggested that a statement from the student or a telephone call to the Selective Service System would be equally effective and less burdensome to the institution. One commenter requested that the Secretary address the issues regarding students who failed to register with Selective Service and are currently beyond the age of registration, veterans of the Armed Forces who never registered, and aliens who missed the opportunity to register. One commenter suggested that the data match with the Selective Service System eliminates the need for a Statement of Registration Status and recommended deletion of the Statement of Registration Status from the student's output document. Another commenter noted that section 484(n) of the HEA provides that an institution may use data or documents to support the student's registration, or exemption from registration, as a substitute for a separate statement of compliance, but the commenter suggested that no regulatory provisions exist, or are proposed, for waiver of the Statement of Registration Status if the student submits documentation proving that he is registered. Concern was also expressed by a commenter that the 30-day minimum period allowed for the student to submit a Statement of Registration Status imposes Selective Service enforcement responsibilities on institutions. Another commenter suggested that the Secretary stress in the preamble to these regulations that the 30-day provision is a minimum requirement and that institutions have the option of a later deadline. One commenter was concerned about whether an institution can allow exceptions to the 30-day deadline if an output document is submitted close to the end of an award year and the 30-day period would extend beyond the end of the award year, thereby precluding the student's eligibility for programs without late disbursement provisions. Another commenter questioned whether the 30-day period should begin at the time the institution receives the student's output document, given the fact that many institutions using electronic output documents receive the output documents before the student receives them. One commenter requested specific examples of what the Secretary would describe as clear and unambiguous evidence of compliance with Selective Service registration requirements, and suggested that the examples should include returned Postal Service receipts from the Selective Service System. Another commenter suggested that the Secretary add a provision to § 668.7(a)(13) to provide that if a student submits a Statement of Registration Status claiming to be registered with Selective Service and that claim is not confirmed by the data match, the student should be required to present evidence from the Selective Service System to resolve these conflicting sources of information. Several commenters suggested that if the data match is out of service, the Secretary should delay processing the student's application for title IV, HEA assistance until the data match is again operational.

Discussion: Section 484(n) of the HEA requires the Secretary to conduct a data base match with the Selective Service System for the purpose of enforcing the Selective Service registration provisions of section 113 of Public Law 97–252. Since the Secretary's participation in this data match is mandatory, the institution's compliance with section 2 of the Computer Matching and Privacy Protection Act of 1988 is also mandatory with respect to providing the student a minimum of 30 days to provide a Statement of Registration Status, or clear and convincing evidence to the institution to support the student's claim to have registered, or to be exempt from, Selective Service registration. If the data match does not confirm that the student is registered with Selective Service, the Secretary does not consider the student's statement to be "clear and convincing" evidence, but considers the institution's documented statement based on a telephone conversation with an employee of the Selective Service System to meet the "clear and convincing" standard. Returned Postal

Service receipts from the Selective Service System are also acceptable forms of documentation. Regarding the recommendation for a waiver of the Statement of Registration Status if evidence of registration is submitted by the student, the Secretary notes that provisions for such a waiver already exist in § 668.33. However, the Secretary believes that a revision to § 668.7(a)(13)(ii) is needed to clarify that § 668.33 may require the student to file a Statement of Registration Status or other evidence. With regard to veterans of the U.S. Armed Forces who failed to register with the Selective Service System, the Secretary recently issued final regulations (58 FR 32188, June 8, 1993) that address this issue. Section 668.33(b) of the Student Assistance General Provisions now provides that the student is not required to be registered with the Selective Service System if the student "served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the reserve forces and National Guard." Section 668.33(b) also provides that a student who was required to be registered with the Selective Service System prior to age 26, is now at least 26 years old or older, and claims to have unknowingly failed to register with the Selective Service System must demonstrate to the institution that he did not knowingly and willfully fail to register with Selective Service. This requirement is satisfied if the student obtains and presents to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register. Section 668.33, as revised by the June 8, 1993 final regulations, also provides for a waiver of the Statement of Registration Status if the student submits to the institution documentation proving that he is registered. With regard to the comment suggesting removal of the Statement of Registration Status, the statute provides for use of documentation as a substitute for the Statement of Registration Status only if the student is able to submit such documentation. If the student claims to have registered with Selective Service, or claims to be exempt from registration, and does not have evidence to support such claims, the Statement of Registration Status is an effective means of communicating these claims to the institution. With regard to the comment that the 30-day period for the student to submit a Statement of Registration Status forces institutions into an "enforcement" position of denying title IV, HEA assistance based on institutionally-set deadlines, the Secretary wishes to emphasize that the 30-day requirement is mandated by the Computer Matching and Privacy Protection Act of 1988 and that the provision establishes a minimum length of time, giving institutions the option of setting a later deadline. Furthermore, the 30-day period is intended to provide due process protection to an individual who may be adversely affected by the results of a data match, and is not intended to force the institution into denying title IV, HEA assistance to students before the institution would otherwise be prepared to do so. The Secretary also realizes that strict adherence to the 30-day minimum period may create difficulties when the student's application is being processed near the end of the award year, and supports the use of institutional discretion in setting deadlines that conform to existing statutory requirements and practical considerations regarding the time needed to process title IV, HEA applications. With regard to the comment concerning the beginning of the 30-day period for institutions with electronic access to output documents, the 30-day period should not begin until the student acknowledges to the institution receipt of the output document containing information relating to the results of the data match.

Changes: Section 668.7(a)(13)(ii) is revised to clarify that if the student's Selective Service System status is not confirmed by the data match, the student may be required to file a Statement of Registration Status or other evidence as required by § 668.33.

Incarcerated Students

Comments: One commenter requested clarification with respect to whether a student meets the Secretary's definition of "incarcerated" if the student is furloughed during the day for the purpose of attending classes and returns to confinement in a correctional institution at night. Other commenters questioned whether an incarcerated student should be allowed to receive his or her loan for a period of attendance completed before the incarceration begins. One commenter requested that the Secretary describe or reference calculation and disbursement procedures for borrowers who have reduced eligibility due to incarceration. Another commenter questioned whether a student who is incarcerated at the beginning of an enrollment or payment period and is subsequently released prior to the end of that period should be considered eligible for the entire period.

Discussion: The Secretary is considering the definition of an "incarcerated student" in a separate proposed rulemaking published in the **Federal Register** on February 10, 1994 (59 FR 6446–6465). Until that rulemaking is effective, institutions are advised to seek the advice of their own legal counsel with regard to compliance with section 484(b)(5) of the HEA, which makes incarcerated students ineligible to receive assistance under the title IV, HEA loan programs. This comment will be considered along with any others received during the comment period applicable to that rulemaking. With regard to whether an incarcerated student can receive a loan disbursement for a period of attendance completed before incarceration, section 484(b)(5) of the HEA precludes an incarcerated student from receiving a loan disbursement, even if the disbursement would have applied toward a period of attendance already completed. Calculations of eligibility for students who become incarcerated during a payment period should be similar to the calculations made with regard to cost of attendance for a borrower who withdraws from the institution during the period. A student who is incarcerated at the beginning of a payment period and is subsequently released before the end of the payment period is eligible for disbursement of loan funds provided that the disbursement is made after release from incarceration and the student maintains an eligible student status as provided in § 668.7.

Changes: None.

Social Security Number

Comments: One commenter questioned the need for a social security number data match, suggesting that institutions should be allowed to maintain evidence of a correct social security number on file. Several commenters expressed concern that title IV, HEA assistance may be delayed to a student if the data match with the Social Security Administration is out of service at the time the student's application for title IV, HEA assistance is processed and the student is unable to promptly provide evidence of a correct social security number. One commenter suggested the use of several data elements as matching criteria, including proper names, nicknames, abbreviated names, and married names. One commenter questioned the Secretary's

proposal to resubmit the student's social security number for a final determination if there is a possibility the data match could again be nonoperational. Title IV, HEA assistance may be delayed, according to other commenters, when institutions choose not to incur liability if a student provides evidence of a correct social security number that differs from the social security number originally submitted to the Secretary. Several commenters suggested that the Secretary should issue a rejected output document if the student's social security number is not confirmed, and that responsibility for reconciliation of the nonconfirmed match should be placed on the student and the Social Security Administration. Several commenters suggested that, if the accuracy of a student's social security number is not confirmed because the data match is not in operation, the institution should assume that the social security number provided by the student is correct until a subsequent data match indicates that the social security number is incorrect, and that the student should not be required to present evidence to prove the accuracy of his or her social security number. One commenter asked the Secretary for specific guidance on how to assist the student in providing evidence and obtaining a final determination from the Secretary with regard to the accuracy of the student's social security number, and several commenters urged the Secretary to allow the institutions to make this final determination. Another commenter requested the opportunity to make a first disbursement without liability if the student can provide evidence of an accurate social security number. One commenter suggested that, once verification confirms that the student's social security number is accurate and such verification is documented in the student's file, no subsequent verification of the student's social security number be required in subsequent years. One commenter questioned whether corrections to the student's social security number will cause a permanent change to the student's record identification number, and whether the default data match will be initiated based on the corrected social security number. Several commenters suggested that a maximum turnaround time be allowed for institutions to await a final determination from the Secretary with regard to the accuracy of a student's social security number and that, if a final determination is not received by the due date, that the institution be allowed to disburse title IV, HEA funds. Several commenters requested a thorough test of the matching data base to prevent nonconfirmations of social security numbers because of name changes, misspellings, and other typographical errors. One commenter suggested that the institution should be allowed to require evidence of an accurate social security number if the institution has information that conflicts with the Secretary's confirmation that the student's social security number is correct. One commenter recommended the deletion of § 668.7(i)(1), contending that there are no circumstances in which the institution would be required to comply with this provision. One commenter objected to any assignment of liability to the institution in light of section 484(p)(4) of the HEA, which prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. One commenter suggested that students who do not meet the institutional deadline as proposed in § 668.7(i)(3)(i) should be ineligible for the period of enrollment during which they applied for title IV, HEA assistance, not for the entire award year.

Discussion: With regard to the comment concerning the need for a data match with the Social Security Administration, section 484(p) of the HEA requires the Secretary, in cooperation with the Commissioner of the Social Security Administration, to verify any social security number provided by a student applying for title IV, HEA assistance. The Secretary believes that a data match is the most efficient method of accomplishing this task. The Secretary understands that a student with a social security number that is not confirmed by the Secretary because the data match is out of service may experience delays in title IV, HEA assistance if he or she cannot promptly provide evidence of a correct social security number. As a possible solution to this problem and to reduce administrative burden on institutions, the Secretary considered carefully the possibility of delaying the processing of applications when the data match is out of service. Such delays would back up entire batches of applications on subsequent processing days, however, and would seriously compromise the efficiency of the processing system during peak volume periods. The Secretary is confident that interruptions in data match operations will be rare, that the data match will provide virtually trouble-free, continuous service and that the institution will very infrequently need to resubmit a social security number because the data match is out of service. If the match is out of service, however, the Secretary believes that the institution should require documented evidence from the student of a correct social security number and should make a determination that the student's social security number is correct before disbursing title IV, HEA assistance. With regard to the comment favoring the use of proper names, nicknames, abbreviated names and married names as matching criteria, the Secretary, in cooperation with staff at the Social Security Administration, considered a number of possible data items that are normally collected by the Social Security Administration, and has determined that the student's name, date of birth, and social security number are the three most useful matching elements. With regard to the commenter who suggests that title IV, HEA assistance will be delayed if the student's institution chooses not to incur liability if the student provides evidence of a social security number that differs from the social security number originally submitted to the Secretary, section 484(p)(2) has been revised by the Higher Education Technical Amendments of 1993 to accommodate this concern. According to this revised statutory provision, if a student's social security number is determined by the Secretary to be incorrect, the institution must deny the student's eligibility for title IV, HEA assistance until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct. The Secretary will not impose any liability on the institution making this determination if the student's social security number is subsequently found to be incorrect, provided that the institution has not committed fraud and the institution's determination is based on clear and convincing evidence. The institution may make a determination that a social security number is correct and disburse title IV, HEA assistance to an otherwise eligible student even if the student is submitting a social security number that differs from the social security number originally submitted to the Secretary. If such a determination is made, the institution will be required to report the new social security number to the Secretary, and the Secretary will accept the new social security number as accurate. This statutory change addresses the concerns of commenters seeking guidance on how to provide evidence and obtain a final

determination from the Secretary with regard to a student's social security number that has not been confirmed as accurate by the data match. The institution has the authority to make a determination with regard to the accuracy of a student's social security number. Commenters urging the Secretary to allow the institution to make a final determination, commenters seeking to make disbursements without liability if the student can provide evidence of an accurate social security number, and commenters suggesting a maximum turnaround time for the Secretary's final determination have also had their concerns addressed by this change. The Secretary agrees in principle with the commenter who suggests that the Secretary should issue a rejected output document if the student's social security number is not confirmed. Rejected output documents are planned for applications in which the social security number does not correspond with a valid social security number in the Social Security Administration data base. However, the Secretary plans to use the output document to alert the institution to particular matching criteria, such as the date of birth, that do not match corresponding data in the Social Security Administration data base, rather than rejecting the application for minor discrepancies. The Secretary is interested in minimizing the burden on institutions wherever possible in this process of reconciling nonconfirmed matches and solicits comments from institutions at any time with regard to the technical aspects of data match operations. However, the Secretary disagrees with the commenter who would place responsibility for reconciliation of nonconfirmed matches on the student and the Social Security Administration. The institution retains primary responsibility for ensuring that all students receiving title IV, HEA assistance are eligible students in accordance with this section of the regulations. The Secretary agrees with the commenter's suggestion that a verified social security number should not need verification in subsequent years, and will include the social security number as part of the renewal application data items that are transferred from year to year. With regard to the comment regarding use of the student's corrected social security number as the student's record identification number and for purposes of the default match, the Secretary will maintain both social security numbers in the processing system but will automatically rerun the default match for any corrected social security number. The Secretary agrees with the commenter who suggests that the Social Security Administration data base be tested to prevent nonconfirmations due to name changes, misspellings, and other typographical errors, and has begun such testing. However, the Secretary recognizes that the data base is only as accurate as the data that is made available to it and kept updated by individuals. The Secretary also agrees with the commenter who suggests that the institution be allowed to require evidence of an accurate social security number from the student if the institution has information which conflicts with the Secretary's determination from the data match that the student's social security number is accurate. The Secretary does not agree with the commenter who proposes the deletion of § 668.7(i)(1), which prohibits an institution from denying, delaying, reducing, or terminating a student's eligibility for title IV, HEA assistance because social security number verification is pending. This provision, also found in section 484(p)(1) of the HEA, prevents delays in disbursements of title IV, HEA assistance to students attending institutions that would otherwise not disburse title IV, HEA assistance on the basis of their own determinations that the student's social security number is correct. For students whose social security numbers are not confirmed as correct by the data match, section 484(p)(2) mandates a delay in title IV, HEA disbursements until documented evidence of a correct social security number is provided to the institution. However, once this evidence is provided and the institution determines that the social security number is correct, section 484(p)(1) prohibits any further delays in title IV, HEA disbursements to otherwise eligible students. The Secretary disagrees with the commenter who argues that the Secretary cannot assign liability to an institution failing to comply with the requirements of this section, on the basis that section 484(p)(4) of the HEA prohibits the Secretary from taking any compliance, disallowance, penalty, or other regulatory action against an institution with respect to an error in a social security number, unless the error is the result of institutional fraud. The Secretary, in accordance with this provision, will not take any of the administrative actions mentioned in HEA section 484(p)(4) against an institution that, notwithstanding compliance with this section, makes a title IV, HEA disbursement to a student using an incorrect social security number. However, section 484(p) does not prevent the Secretary from holding an institution liable for any title IV, HEA disbursements made in error to a student if the erroneous disbursements were caused by the institution's failure to comply with the provisions of this section.

Changes: If there is a determination by the Secretary that the social security number provided by a student to an institution is incorrect, § 668.7(i) is revised to allow an institution to determine that a student's social security number is correct based on documented evidence. If the institution verifies the accuracy of a social security number that differs from the social security number originally provided to the Secretary, the institution is required to report the correct social security number to the Secretary. Section 668.7(i)(2) is also revised to require an institution to collect evidence of a correct social security number if the institution has information that conflicts with the Secretary's determination that the student's social security number is correct.

Enrollment in Correspondence or Telecommunications Courses

Comments: One commenter suggested that the Secretary clarify that a student's ineligibility for title IV, HEA assistance because of the student's enrollment in a correspondence course not leading to a degree extends only to that course, and that the same student may be eligible for title IV, HEA assistance if he or she is enrolled in degree program courses. The same commenter inquired as to whether a student enrolled in a telecommunications course that is being categorized as a correspondence course for purposes of HEA section 484(l)(1) is also counted as a correspondence student for purposes of HEA section 481(a)(3).

One commenter questioned whether a course taught through live, interactive telephone transmission qualifies as a telecommunications course. One commenter requested clarification with regard to whether the Secretary's use of the phrase "part of an educational program" in § 668.7(a)(15) refers to part of the student's academic program or part of the curriculum of the institution. One commenter questioned whether students enrolled in residential degree programs who enroll in additional correspondence courses for purposes of certification or licensure would be eligible for title IV, HEA assistance. The same commenter inquired as to whether an aid officer can deny funding applicable to correspondence programs

provided at another institution with which a consortium agreement exists. One commenter suggested that the Secretary should institute a waiver procedure which would allow certain institutions to waive the 50 percent standard provided in § 668.7(j). One commenter requested that the Secretary define the term "correspondence."

Discussion: The Secretary agrees with the commenter's presumption that a student enrolled in a telecommunications or correspondence course that is not part of a degree program is ineligible for title IV, HEA assistance only to the extent that he or she is enrolled in ineligible courses. An otherwise eligible student who is enrolled in both degree program coursework and non-degree correspondence courses continues to be eligible for title IV, HEA assistance to offset the costs of the degree program courses. With regard to the applicability of the 50 percent standard to HEA section 481(a)(3), the Secretary wishes to emphasize that the calculation of the percentage of telecommunications and correspondence courses provided for in § 668.7(j) is applicable only to § 668.7(j), and does not apply to the standard set for percentage of students enrolled in correspondence courses in HEA section 481(a)(3). With regard to the question concerning use of the phrase "part of a program" in § 668.7(a)(15), the phrase refers to the student's academic program, which must lead to an associate, bachelor's, or graduate degree. A student enrolled in correspondence courses for the purpose of attaining certification or licensure is not eligible for title IV, HEA assistance for those courses, but may be eligible to receive title IV, HEA assistance for other correspondence courses in a degree program. With regard to the comment concerning consortium agreements, the aid officer may deny title IV, HEA assistance to a student for any correspondence courses that do not meet degree-seeking requirements, including correspondence courses taken by consortium agreement at another institution. With regard to whether a course taught through live, interactive telephone transmission is a telecommunications course, the Secretary notes that HEA section 484(m)(4) defines "telecommunications" as "the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution." Since the definition encompasses audio or computer conferencing, a course taught through interactive telephone transmissions must be considered a telecommunications course. With regard to the comment requesting a waiver procedure, the Secretary has no authority to prescribe procedures for waiving any of the provisions in HEA section 484. With regard to a definition of "correspondence," the Secretary is considering a definition of "correspondence course" in a separate proposed rulemaking published in the **Federal Register** on February 10, 1994 (59 FR 6446–6465). Until that separate rulemaking is published as final regulations, the commenter may refer to § 600.2 of the Institutional Eligibility regulations, which defines a "program of study by correspondence" as "an educational program offered principally by mail by an institution. Under this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training."

Changes: None.

Program of Study Abroad

Comments: One commenter questioned whether the Secretary intends to limit the eligibility of permanent resident aliens and other noncitizen students seeking assistance under the Federal Family Education Loan Program for the purpose of enrolling in study abroad programs. One commenter asked for clarification concerning the circumstances under which an aid officer could approve a study abroad course that is not part of the student's degree program.

Discussion: Permanent resident aliens and other noncitizens who are determined to be eligible students for purposes of § 668.7(a)(4)(ii) and part 668, Subpart I, and are otherwise eligible, are not prohibited from enrolling in study abroad programs. With regard to the approval of a study abroad course that is not part of a degree program, this provision ensures that an eligible student may receive title IV, HEA assistance for any study abroad course that is approved for credit at an eligible institution, and that the course need not be required for completion of a specific degree. For example, an otherwise eligible student pursuing a degree in mathematics may receive title IV, HEA assistance for an elective course in art history taken abroad, provided that the art history course is approved for credit by the eligible institution toward the student's graduation.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Student aid.

Dated: February 2, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Opportunity

Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Early Intervention Scholarship Program, 84.272)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.2, paragraph (b) is amended by adding in alphabetical order a new definition for "Output document" to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), other document or automated data generated by the Department of Education's central processing system as the result of processing the data provided in a Free Application for Federal Student Aid (FAFSA) or multiple data entry application.

* * * * *

3. Section 668.7 is amended by revising paragraph (a)(1)(ii) and adding a new paragraph (a)(1)(iii); revising paragraph (a)(8); removing the word "and" at the end of paragraph (a)(11)(vii); removing the period at the end of paragraph (a)(12), and adding, in its place, a semicolon; and by adding new paragraphs (a)(13), (a)(14), (a)(15), (a)(16), (i), (j), and (k) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(1) * * *

(ii) For purposes of the Stafford Loan, PLUS, SLS, or Federal Direct Student Loan Program, enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Stafford Loan, PLUS, SLS, CWS, Perkins Loan, or Federal Direct Student Loan Program, enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

* * * * *

(8) In accordance with the requirements of § 668.32, has filed a Statement of Educational Purpose;

* * * * *

(13) Has filed—

(i) An output document confirming registration with Selective Service by providing the results of a data match with the Selective Service System; or

(ii) In the absence of confirmation as provided in paragraph (a)(13)(i) of this section and within a deadline to be set by the institution of no less than 30 days from the date the institution receives the output document, a Statement of Registration Status or other evidence in accordance with § 668.33;

(14) For purposes of the FFEL, Federal Direct Student Loan, and Federal Perkins Loan programs, is not an incarcerated student at the time funds are delivered or disbursed;

(15) Is, if enrolled in a telecommunications or correspondence course, enrolled in a telecommunications or correspondence course that is part of an educational program leading to an associate, bachelor's, or graduate degree; and

(16) Except for residents of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau, has a correct social security number that has been verified in accordance with the requirements of paragraph (i) of this section;

* * * * *

(i) *Social security number.* The Secretary verifies a social security number provided by a student to an eligible institution and shall enforce the following conditions:

(1) An institution shall not deny, reduce, delay or terminate a student's eligibility for assistance under the title IV, HEA programs because social security number verification is pending;

(2) If the institution receives an output document from a student indicating that the Secretary has determined that the student's social security number is correct, the institution shall not require the student to produce other evidence to confirm that the student's social security number is correct, unless the institution—

(i) Has documentation that conflicts with the social security number status reported on the output document; or

(ii) Has reason to believe the output document is incorrect.

(3) If the institution receives an output document from a student indicating that the Secretary has determined that the social security number provided to the institution by the student is incorrect, or that the Secretary was unable to confirm that the social security number provided to the institution by the student is correct, the institution—

(i) Shall provide the student an opportunity, within a deadline of at least 30 days from the date the institution receives the output document, to provide clear and convincing evidence to verify that the student has a correct social security number; and

(ii) May disburse any combination of title IV, HEA program funds, employ the student under the Federal Work-Study Program, or certify a Federal Stafford, Federal PLUS, Federal SLS, or Federal Direct Student loan application for the student upon making, based on the evidence provided for in paragraph (i)(3)(i) of this section, a determination that the social security number provided by the otherwise eligible student to the institution is correct; and

(iii) Shall report the student's correct social security number to the Secretary if the correct social security number differs from the social security number previously reported by the student to the Secretary.

(4) If a student fails to submit the documentation by the deadline established in accordance with paragraph (i)(3)(i) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; or certify a Federal Stafford, Federal PLUS, Federal Direct Student Loan, or Federal SLS loan application for the student for that period of enrollment.

(5) If the Secretary determines that the social security number provided to an eligible institution by a student is incorrect, and the institution has not made a determination under paragraph (i)(3) of this section, and a loan has been guaranteed for the student under the Federal Family Education Loan Program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty shall not be voided or otherwise nullified with respect to disbursements made before the date that the lender and the guaranty agency receive the notice.

(6) Nothing in this section shall permit the Secretary to take any

compliance, disallowance, penalty or other regulatory action against—

(i) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(ii) Any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.

(j) *Special provisions regarding telecommunications and correspondence courses.* (1) A student enrolled in an educational program at an eligible institution (other than an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor's, or graduate degree conferred by the institution is not enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of all courses delivered at that institution.

(2) The percentage provided in paragraph (j)(1) of this section is calculated by comparing the total number of correspondence and telecommunications courses delivered during the preceding award year with the total number of all courses delivered during that award year. If an institution delivers the same course in person, by telecommunications, or by correspondence, the Secretary considers each delivery of the course by the institution to be a separate course for purposes of this calculation.

(3) A student is subject to reduced eligibility for title IV, HEA assistance if the financial aid administrator determines under the discretionary authority provided in section 479A of the HEA that the student's telecommunications instruction results in a substantially reduced cost of attendance to the student.

(k) *Program of study abroad.* (1) An otherwise eligible student who is engaged in a program of study abroad is eligible to receive title IV, HEA assistance if—

(i) The student maintains enrollment in an eligible institution during his or her program of study abroad; and

(ii) The eligible institution approves the program of study abroad for academic credit at the eligible institution.

(2) The study abroad program need not be required as part of the student's degree program.

§ 668.131 [Amended]

4. Section 668.131 is amended by removing the definition of *Output document.*

[FR Doc. 94-6127 Filed 3-15-94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
April 11, 1994

Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC07

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan Program, formerly the Guaranteed Student Loan (GSL) program. The final regulations are needed to delete a provision of the regulations regarding the school closure plan requirement for certain private schools.

EFFECTIVE DATE: These regulations take effect July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe, Acting Chief, FFEL Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, room 4310, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment is needed to delete from the regulations the school closure plan requirement for certain private schools. On January 7, 1993, the Secretary issued final regulations amending 34 CFR 682.600 to require private schools that do not qualify as an "institution of higher education" under 34 CFR 600.4 and offer an undergraduate nonbaccalaureate program designed to prepare students for a particular vocation, trade or career field as a requirement for participation in the FFEL Program to have a school closure plan in place within six months of the effective date of April 13, 1993. The regulations were intended to address a serious problem that occurs whenever a school closes precipitously, leaving its students unable to complete their programs of study, usually without any provision for teaching out the affected students.

The issue was initially addressed in a notice of proposed rulemaking (NPRM) published on June 5, 1989 (54 FR 24128). The NPRM proposed that a school would be required to have a teachout agreement with another participating school under which the second school would agree to teach the closing school's students. This requirement would have applied to all schools offering a program of study designed to prepare students for a particular vocation, trade or career. The public comments strongly opposed the "teachout" requirement and pointed out that, in many circumstances, a teachout was not possible due to the location of the school or the highly specialized nature of the course work. Many commenters also identified alternatives to a teachout arrangement. The Secretary decided, after extensive consultation with the community, not to pursue a final regulation based on this NPRM.

On September 5, 1991 (56 FR 43978), the Secretary published a second NPRM that would require schools to maintain a school closure plan but would expand the options available to satisfy this requirement. While this regulatory proposal also generated a considerable amount of negative comment, the Secretary believed at that time that the need to protect the interests of students outweighed the possible negative impact of the regulations on affected schools. The final regulation was published on January 7, 1993 (58 FR 3174).

Since publication of the final regulations, the Department has received many objections to the regulatory requirement of a school closure plan that were not raised during the public comment period. In addition, the Department has been evaluating the necessity of these regulations in light of other actions it is implementing or has initiated to address the problems created by school closures. For example, the Higher Education Amendments of 1992, Public Law 102–325, amended the Higher Education Act (HEA) to strengthen ED's oversight of institutions, including more frequent monitoring of the financial stability of schools. In those cases where there is a risk of precipitous closure, ED is already requiring surety arrangements to cover potential losses to students and taxpayers. Public Law 102–325 also provides for cancellation of a borrower's obligation on a FFEL Program loan if the borrower is unable to complete his or her program of study because the institution closed. In light of additional information provided to the Department and these legislative developments, the Secretary has decided to withdraw 34 CFR 682.600(d).

In the Paperwork Reduction Act of 1980 section of the NPRM that was published for this regulation in the September 5, 1991 **Federal Register**, the Department indicated that there was an information collection requirement under § 682.600(d). The Department estimated the annual public reporting burden for this collection of information to be an average of one hour per response for 638 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Based on an average salary of $5.00 an hour for a staff person at a school covered by this requirement, it would cost each covered school $5.00 to comply with this provision. This was not an annual cost for each school. Based on this estimate, deletion of this regulatory requirement would save the covered schools each one hour of work at $5.00 per hour.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since publication of the final regulations in 34 CFR 682.600(d) in the January 7, 1993 **Federal Register**, the Secretary has received a substantial number of comments concerning the implementation of the regulatory requirement for school closure plans. As discussed above, significant cause has been shown to revoke § 682.600(d) as an inappropriate burden on the program community. However, under section 482(c) of the Higher Education Act, such revocation may take effect on July 1, 1994 only if published in final form by May 1, 1994; otherwise the revocation will not take effect until July 1995. Therefore, to avoid the delay that would be occasioned by publication of a proposed rule, the Secretary has determined that publication of a proposed rule is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practices and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: March 18, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.600 [Amended]

2. Section 682.600 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

[FR Doc. 94–8523 Filed 4–8–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
April 13, 1994

Part IV

Department of Education

34 CFR Part 668 et al.

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

Student Assistance General Provisions, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Direct Student Loan, and Federal Pell Grant Programs

AGENCY: Department of Education.

ACTION: Notice of relief from regulatory provisions.

SUMMARY: The Secretary of Education announces regulatory relief from specific regulations governing the Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Family Education Loan (FFEL), Federal Direct Student Loan, and Federal Pell Grant programs, for the 1993–94 and 1994–95 award years, to assist institutions and individuals who suffered financial harm from the California earthquake of January 1994.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kathy S. Gause, Senior Program Specialist, Grants Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW., (Regional Office Building 3, room 4018), Washington, DC 20202–5447. Telephone (202) 708–4690. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Many institutions of higher education, student financial aid applicants, and recipients have been adversely affected by the earthquake in California. The President signed the Emergency Supplemental Appropriations Act of 1994 (Pub. L. 103–211) on February 12, 1994. The Act authorizes the Secretary to reallocate any excess funds under the Federal Perkins Loan and the FWS programs from the 1993–94 award year to assist individuals who suffered financial harm as a result of the California earthquake of January 1994. The Secretary has the authority to reallocate these funds only to institutions for use in the 1994–95 award year. Institutions will be informed of the application procedures for obtaining reallocated funds to assist California earthquake victims in a letter issued by the Department to financial aid administrators.

The Emergency Supplemental Appropriations Act of 1994, however, does not expressly authorize the reallocation of funds returned under the FSEOG Program. The Higher Education Act of 1965, as amended (HEA), in section 413D permits the Secretary, in accordance with regulations, to reallocate excess FSEOG funds returned by an institution to other institutions. Under current FSEOG regulations (34 CFR 676.4), the Secretary reallocates funds on a *pro rata* basis, *i.e.*, the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FSEOG request. The Secretary has decided to promulgate standards to allow excess funds under the FSEOG Program from the 1993–94 award year to be reallocated during the 1994–95 award year to assist students adversely affected by the California earthquake. The funds will be reallocated to institutions that enroll students adversely affected by the earthquake and submit applications in the format required by the Secretary. If the total funds requested exceed the total funds available, the funds will then be reallocated on a *pro rata* basis only among these institutions to provide assistance to students whose financial need has increased as a result of the 1994 California earthquake.

The Secretary recognizes the severe impact the earthquake has had on institutions and their students located in the designated natural disaster areas. Many institutions and individuals adversely affected by the earthquake are facing immediate problems concerning the disbursement and repayment of student loans.

The Title IV student financial aid programs affected by this notice are the FFEL Program (consisting of the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program); the Federal Direct Student Loan Program; the Federal Pell Grant Program; and the Federal Perkins Loan, FWS, and FSEOG programs (known collectively as the campus-based programs). To assist both institutions and individuals, this notice also provides certain regulatory relief to institutions in their administration of these student financial aid programs.

The Secretary has already provided certain regulatory relief to lenders and guaranty agencies in the FFEL Program under section 432(a)(6) of the HEA and 34 CFR 682.406(b) and 682.413(f). The guaranty agency directors were informed of this relief in a letter dated January 31, 1994.

Covered Individuals

This notice is intended to assist institutions and individuals that have been adversely affected by the California earthquake of January 1994. This notice will apply to institutions that were unable to maintain normal operations because they were located in Los Angeles, Orange, or Ventura Counties on the date on which the President declared the existence of a major disaster. This notice of relief also applies only to individuals who suffered financial harm from the disaster and, at the time the disaster occurred, were residing, attending an institution of higher education, or employed in the counties designated as disaster areas (or, in the case of an individual who is a dependent student, whose parent or stepparent suffered financial harm from such disaster and resided or was employed in such an area at that time). This notice of regulatory relief will be applicable for awards made under the Title IV programs and collection activities conducted under the Federal Perkins Loan Program during the 1993–94 and 1994–95 award years (the periods from July 1, 1993 to June 30, 1994 and July 1, 1994 to June 30, 1995).

Note: For further updates to the list of designated disaster areas, institutions may contact the Department on its toll-free number at 1–800–433–3243 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call 1–800–730–8913 between 9 a.m. and 5:30 p.m., Eastern time, Monday through Friday.

The Secretary provides the following enforcement relief from the regulations governing the student financial aid programs under Title IV of the HEA:

I. 34 CFR Part 668—Student Assistance General Provisions

A. 34 CFR 668.19 Financial Aid Transcript

Under current regulations, before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution to which the student is transferring must make an effort to obtain the student's financial aid transcript. The Secretary is waiving the

requirement to obtain financial aid transcripts before disbursing funds for individuals who attended institutions covered by this notice for the 1993–94 and 1994–95 award years. If the financial aid transcript is not available as a result of damage caused by the California earthquake, the institution may disburse Title IV funds. Any institution affected by this situation must document in the student's file that the financial aid transcript is unavailable due to damage stemming from the natural disaster. In addition, the student will still be expected to provide statements concerning all prior financial aid received, and the institution will be expected to retain this information in the student's file.

B. 34 CFR 668.51–668.61 Subpart E—Selection of Applicants for Verification

The Secretary is waiving verification requirements under 34 CFR 668.51–668.61 during the 1993–94 and 1994–95 award years for those applicants who are selected for verification and whose records were lost or destroyed because of the California earthquake. The institution must document in the student's file that the records are unavailable due to damage stemming from the natural disaster. For these students, Verification Status Code "S" may be used when reporting a Federal Pell Grant disbursement.

II. 34 CFR Part 690—Federal Pell Grant Program

34 CFR 690.83 Submission of Reports

The Secretary modifies the deadline in 34 CFR 690.83(a)(1)(i) that an institution submit all SAR Payment Vouchers (or the equivalent) for an award year by September 30 following the end of the award year in which the grant is made. The Secretary will extend this reporting date, on a "case-by-case" basis, for institutions affected by the California earthquake.

III. 34 CFR Part 674 and 676—Federal Perkins Loan and FSEOG Programs

A. Federal Perkins Loan Program

1. 34 CFR 674.31 Promissory Note

Under 34 CFR 674.31(b)(2), the terms of a student's promissory note require that repayment of a loan must begin six (6) or nine (9) months after a borrower ceases to be at least a half-time regular student and that the repayment period normally ends 10 years later. The Secretary is modifying this provision that specifies the commencement of a borrower's repayment period to provide that any borrower who was in an "in-school" status at the time the natural disaster occurred and was unable to complete course requirements or enroll in classes due to the earthquake will continue to be in an "in-school" status until such time as the borrower withdraws or until the end of the 1993–94 award year, whichever is earlier. The institution must document this reason for continued "in-school" status in the student's file.

2. 34 CFR 674.42 Contact With the Borrower

The Secretary will not require an institution to comply with the provisions of § 674.42(b) that require an institution to make contact with the borrower during an initial or postdeferment grace period if that grace period coincides with the California earthquake. These requirements shall be suspended for a period of time not to exceed the earlier of either the date on which the institution is able to resume normal contact with the borrower or June 30, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

3. 34 CFR 674.41–674.50 Subpart C—Due Diligence

The Secretary will not enforce 34 CFR part 674, subpart C—Due Diligence. An institution may suspend the collection activities for borrowers already in default at the time of the natural disaster. These requirements shall resume on July 1, 1994. An institution must document the reason for suspension of these activities in the borrower's file.

4. 34 CFR 674.34–674.37 Deferment of Repayment

The Secretary modifies the provisions for hardship deferment in 34 CFR 674.34(i), 674.35(e), and 674.36(e) and authorizes an institution to grant an administrative hardship deferment to a borrower who is in repayment at the time of the natural disaster but who is unable to continue to repay the loan due to the disaster. Interest will accrue during any period of administrative hardship deferment. 34 CFR 674.37 requires that a borrower submit a written request for deferment. Under this administrative hardship deferment, a borrower may request this deferment orally and will not be required to submit a deferment documentation form to be considered eligible for this deferment. The administrative hardship deferment may be granted for a period of time not to exceed the earlier of either the date on which the borrower is able to resume making payments on the loan or June 30, 1995. Documentation must be maintained according to the governing regulations.

B. FSEOG Program

34 CFR 676.4 Allocation and Reallocation

For the 1994–95 award year, FSEOG funds returned by institutions from the 1993–94 award year will be reallocated to institutions that enroll students adversely affected by the 1994 California earthquake and submit applications in the format required by the Secretary. If the total funds requested exceed the total amount of funds available, the funds will then be reallocated on a *pro rata* basis only among these institutions to provide assistance to students whose financial need has increased as a result of the earthquake.

IV. 34 CFR Part 682—Federal Family Education Loan (FFEL) Program

A. 34 CFR 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

To assist affected individuals, the Secretary modifies the requirement in 34 CFR 682.604(c)(2) that loan proceeds be delivered to the borrower within 45 days of the institution's receipt of the check but will instead permit the institution to deliver loan proceeds to the borrower up to 120 days from the institution's receipt of the check. Documentation must be maintained according to the governing regulations. The Department still expects delivery of a borrower's loan proceeds as soon as possible.

Also, because some institutions may have to delay opening or have ceased operation for an undetermined period of time, the Secretary authorizes lenders not to disburse loan checks to institutions or to parent PLUS borrowers in the affected areas until the lenders receive revised disbursement schedules from the affected institutions. The Secretary instructs guaranty agencies and lenders to revise information on loan periods, graduation dates, and so forth, on the loan applications related to these disbursements as the information becomes available. This change means that a borrower need not reapply for the loan. This change also will allow a student to receive his or her loan proceeds according to a schedule that fits the institution's new academic schedule.

B. 34 CFR 682.605 Determining the Date of a Student's Withdrawal

The Secretary modifies the requirement in 34 CFR 682.605(b) to permit an institution affected by the

disaster to determine that the student has withdrawn within 90 days (instead of 45) after the expiration of the academic term for an institution that uses academic terms, except that 60 days (instead of 30) after the first day of the next scheduled term may be used in the case of a summer break, and 50 days (instead of 25) after the student's last date of attendance may be used for an institution that measures academic progress in clock hours or credit hours, but does not use a semester, trimester, or quarter system.

C. 34 CFR 682.607 Payment of a Refund to a Lender

The Secretary modifies the deadlines by which an affected institution shall pay a refund that is due to a lender, within 60 days after the student's withdrawal as determined under 34 CFR 682.605(b)(1)–(3) or within 30 days in the case of a student who does not return to the institution at the expiration of an approved leave of absence under 34 CFR 682.605(c). Instead, the Secretary will require the institution to pay a refund to the lender within 120 days (instead of 60) after the student's withdrawal or within 60 days (instead of 30) after the last day of the leave of absence.

D. 34 CFR 682.610 Records, Reports, and Inspection Requirements for Participating Schools

The Secretary modifies the deadline in 34 CFR 682.610(c) that an institution complete and submit required Student Status Confirmation Reports (SSCRs) to the Secretary or guaranty agency within 30 days of the institution's receipt of the report but will instead require completion and submission of these reports within 90 days. Reports of changes of borrower status if the institution does not expect to submit its next SSCR within the next 60 days may also be submitted within 90 days (instead of 30 days).

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the severe impact of the earthquake in California has caused a national emergency that has been recognized by the Congress. The Secretary, recognizing the severe devastation of the California earthquake victims, finds that soliciting further public comment with respect to this notice of relief from regulatory requirements is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice are those resulting from statutory requirements and those determined necessary for providing emergency relief during a natural disaster. This notice provides relief from administrative burden associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. The small entities affected by this notice are small institutions of postsecondary education. This notice provides temporary regulatory relief and will not increase institutions' workload or costs associated with administering the Title IV, HEA programs. It will therefore not have a significant economic impact on the entities affected.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.063 Federal Pell Grant Program; 84.268 Federal Direct Student Loan Program)

Dated: April 8, 1994.

Richard W. Riley,

Secretary of Education.

[FR Doc. 94–8889 Filed 4–12–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
April 26, 1994

Part II

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Announcement of criteria for loan origination—1995–1996 academic year.

SUMMARY: The Secretary of Education issues criteria for the origination of student loans by schools participating in the Federal Direct Student Loan (Direct Loan) Program in the 1995–1996 academic year, which begins July 1, 1995. This notice relates to the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

DATES: *Effective Date:* The criteria are effective June 10, 1994 or later if the Congress takes certain adjournments. If you want to know the effective date of these criteria, call or write the Department of Education contact person.

Applicable Period: The criteria are applicable for the 1995–1996 academic year, which begins July 1, 1995. Criteria for loan origination for the 1994–1995 academic year were published in the **Federal Register** on September 10, 1993 (58 FR 47816). The standards, criteria, and procedures governing other aspects of the Direct Loan Program for the 1994–1995 academic year only were published in the **Federal Register** as 34 CFR part 685 on January 4, 1994 (59 FR 472).

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders as in the Federal Family Education Loan Program.

Background

The statute directs the Secretary to exercise discretion in the selection of schools so that the loans made under the Direct Loan Program will represent 40 percent of the new student loan volume for academic year 1995–1996, the second year of this program. The standards for participation in the Direct Loan Program in the second year were published in the **Federal Register** on February 17, 1994 (59 FR 8080). The Secretary will select schools for the 1995–1996 academic year from schools that respond to the February 17, 1994 invitation to participate in the Direct Loan Program, as well as those eligible schools that applied for the 1994–1995 academic year.

The criteria for originating loans in the second year of the Direct Loan Program are issued in this announcement in final form. The program regulations to implement other aspects of the Direct Loan Program in the second year and subsequent academic years are being developed through a negotiated rulemaking process. The Secretary anticipates publishing final program regulations for the 1995–1996 academic year by December 1, 1994.

While the criteria in this document were not developed through negotiated rulemaking, the members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee were consulted in the development of the criteria at their February meeting.

Eligibility for Origination

In the 1995–1996 academic year, a school originating loans in the Direct Loan Program will be in one of two levels of origination. The Secretary has adopted the criteria in this document because they are indicators of a school's ability to administer financial aid programs. Under the criteria, a school may participate in the first level of origination (Level 1) only if it has a demonstrated ability to fully administer the Direct Loan program.

A school that meets all the criteria for Level 1 origination is eligible to perform all originating functions. If a school does not qualify for Level 1 origination, it is eligible to perform those functions allowed in the second level of origination (Level 2), unless it fails to meet one or more of the criteria required for that level.

A school that is eligible for Level 1 origination may choose to participate in Level 2 origination or use the services of an alternative originator. Similarly, a school eligible for Level 2 origination may choose to use the services of an alternative originator.

The Secretary may exercise discretion and allow a school to originate loans at a level for which it would not otherwise be eligible if the Secretary determines that the school is fully capable of originating loans at that level. The Secretary may also require a school that meets the criteria for Level 2 origination to use the services of an alternative originator if the extent to which the school fails to meet certain other origination criteria merits such an action.

Functions Performed by Level 1 and Level 2 Originating Schools

Under the Direct Loan Program, schools and consortia that originate loans must use software provided by the Secretary, or other software based on specifications provided by the Secretary, to create a loan origination record containing the basic information necessary to make a loan. The software provided by the Secretary reformats the data received from the Central Processing System and computes gross disbursements, loan fees, and net disbursements on the basis of the loan amounts entered by the school. The school must add data, such as the type of loan, loan amount, and disbursement dates, and may computer-generate the Stafford Promissory Note and Disclosure (promissory note). A school may also transmit the information collected by the school to the Direct Loan Program Servicer (Servicer) which, upon request, prints promissory notes on behalf of the school and sends them to the school.

A student who accepts a Direct Loan completes a promissory note and returns it to the school; the school may not disburse Direct Loan funds without a completed promissory note.

Functions Performed Only by Level 1 Originating Schools

A Level 1 originating school in the Direct Loan Program requests and obtains loan funds from the Secretary using a process similar to the process for drawing down funds for other Department of Education (ED) programs. A Level 1 originating school transmits to ED a specific Direct Loan funding request that is separate from its funding requests for other programs and is based on immediate disbursement needs. Direct Loan capital must be tracked separately and cannot be used for purposes other than making Direct Loans. The electronic transfer of funds uses the same delivery process as is used for the Federal Pell Grant Program. After a request for funds is received, the Secretary uses the Automated Clearinghouse (ACH) process through the Federal Reserve Banking system to

deposit funds in a school's designated bank account. Currently, this process takes between 48 to 72 hours from the school's request for funds until the school's receipt of funds.

After receiving funds from the Secretary, a school disburses funds to students by issuing checks or by crediting their accounts at the school. Before a school may disburse funds to a borrower, the school must ensure that it has a completed and signed promissory note. The funds received by a Level 1 originating school that are intended for specific borrowers but not disbursed to those borrowers may be used to fund other borrowers. After the first disbursement is made, the school must record the actual disbursed amount and the date of the disbursement in the loan origination record and transmit all completed loan records and promissory notes (if not previously submitted) to the Servicer. The school transmits subsequent disbursement data to the Servicer as the disbursements occur.

Functions Performed by Level 2 Originating Schools

A Level 2 originating school is assisted in the management of funds by the Servicer. The Servicer reviews the loan origination records and promissory notes transmitted by the school before funds are disbursed. The promissory notes must be correct and complete before funds can be disbursed. The Servicer initiates the transfer of funds to the school three days prior to the anticipated loan disbursement date on the basis of loan origination records and the completed promissory notes. The school receives a roster from the Servicer identifying each borrower, the anticipated disbursement date and amount to be disbursed for each borrower, and the total amount of funds received by the school. Through the ACH process, the funds are sent to the school's bank within 48 to 72 hours following the initiation of the transfer of funds. The funds received by a Level 2 originating school are intended for specific borrowers and may not be used to fund other borrowers. Level 2 originating schools are responsible for reporting actual disbursement data to the Servicer.

Schools That Use an Alternative Originator

The alternative originator manages both the promissory note and funds management processes for schools that use the alternative originator. These schools transmit the data necessary for the alternative originator to generate the promissory note. The alternative originator sends the promissory note to the borrower. The borrower must complete the promissory note and send it back to the alternative originator. The alternative originator reviews the promissory note before funds are disbursed. The promissory note must be correct and complete before funds can be disbursed. The alternative originator initiates the transfer of funds to the school three days prior to the anticipated loan disbursement date on the basis of the loan origination records and the completed promissory notes. The school receives a roster from the alternative originator identifying each borrower, the anticipated disbursement date and amount to be disbursed for each borrower, and the total amount of funds received by the school. Using the ACH process, the funds are sent to the school's bank within 48 to 72 hours following the initiation of the transfer of funds. The funds received by a school using the alternative originator are intended for specific borrowers and may not be used to fund other borrowers. Schools that use the alternative originator are responsible for reporting actual disbursement data to the Servicer. In addition, the Secretary may provide additional loan counseling to students at a school under alternative origination.

Federal Direct Plus Loans

Federal Direct PLUS loans are made through a process similar to the one used in the Federal PLUS loan program. The parent obtains an Application and Promissory Note (promissory note) from the school and, after completing the promissory note, sends it to the school. The school completes the school section of the promissory note and forwards it to the Servicer, where data from the note is key entered and a credit check is performed. Alternatively, a school enters data from the note using the software provided and electronically forwards this information to the Servicer along with the paper copy of the promissory note. In either case, the Servicer performs a credit check to determine whether the parent has an adverse credit history and notifies the school and the parent of the results. If the loan is approved, the Servicer sends a disclosure statement to the parent. If the credit check indicates an adverse credit history, the Servicer advises the parent of available options; for example, the parent may obtain an endorser without an adverse credit history. If the loan is approved and the school is a Level 1 originating school, the school may draw down money and disburse loan funds in the same manner as it would for other loans made under the Direct Loan Program. If the school is not a Level 1 originating school, the Servicer electronically transmits the funding request for the school based on the loan origination records and promissory notes that the Servicer holds for that school.

Reconciliation of Records Performed by All Participating Schools

A school is required to reconcile cash and individual loan records monthly. To reconcile cash, a school must provide documentation to the Servicer that the total net disbursements minus cancellations, plus return of excess cash, is equal to the amount of money the school has drawn down during a one-month period. This process must be completed by the end of the next month. For example, loan records and promissory notes for all disbursements and cancellations made in July 1995 must be transmitted to the Servicer by the end of August 1995. To reconcile loan records, a school's records must match the records of the Servicer. The software that is provided to participating schools is designed to assist schools in this reconciliation process.

Administrative Fees

Level 1 originating schools will have greater responsibility than Level 2 originating schools in the area of funds management. Because of this greater responsibility, a Level 1 originating school will receive a higher administrative fee than a Level 2 originating school. The HEA does not allow a school that participates under alternative origination to receive administrative fees.

Consortia

A consortium of schools in the Direct Loan Program interacts with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools in the consortium is consolidated and channeled through a single point. Each school in a consortium must sign the Direct Loan Program participation agreement with the Secretary and is responsible for the information it supplies through the consortium. If a consortium wishes to originate loans, each school in the consortium must be eligible to originate. The consortium will be eligible to originate at the most restrictive level any school in the consortium is eligible to originate. For example, if one school in a consortium is eligible to originate at the second level and the other schools in the consortium are eligible to originate at the first level, the consortium is eligible

to originate only at the second level of origination.

Criteria Chart

The following chart is provided to show, in a summary format, the criteria for the different levels of origination. Any differences between the language in the chart and the language in the criteria announced in this document should be resolved in favor of the latter.

CRITERIA FOR LOAN ORIGINATION.—1995–1996 ACADEMIC YEAR—AN X INDICATES THAT THE CRITERION MUST BE MET TO PARTICIPATE AT THE INDICATED ORIGINATION LEVEL

Criteria	Original level 1	Original level 2
1. Be currently participating in the Federal Perkins Loan Program or the Federal Pell Grant Program or, for a graduate or professional school, a similar program.	X	
2. If participating in the Federal Perkins Loan Program, not have exceeded the applicable maximum default rate under section 462(g) of the HEA.	X	
3. Have participated in at least one of the student financial assistance programs under title IV of the HEA for the three years immediately preceding July 1, 1995.	X	
4. Not be provisionally certified to participate in programs under title IV of the HEA	X	
5. Not be on the reimbursement system of payment in the Federal Pell Grant Program	X	X
6. Not have received notice that the school is subject to an emergency action or a proposed or final limitation, suspension, or termination action under the HEA.	X	X
7. Not, in the opinion of the Secretary, have had severe performance deficiencies for any of the programs under title IV of the HEA.	X	X
8. If participating in the Federal Pell Grant Program, have submitted Student Aid Reports on a timely basis	X	
9. Not be overdue on Federal cash transaction reports required under title IV of the HEA	X	
10. Not be overdue on program or financial reports or audits required under title IV of the HEA	X	
11. Provide an assurance that the school has no delinquent outstanding debts to the Federal Government (subject to certain exceptions).	X	

A school that does not meet the criteria to originate loans must use the services of an alternative originator.

The Secretary may allow a school to originate loans at a level for which it would not otherwise be eligible if the Secretary determines that the school is fully capable of originating loans at that level. The Secretary may also require a school that meets the criteria for the second level of origination to use the services of an alternative originator if the extent to which the school fails to meet other criteria merits such an action. A consortium of schools may originate loans at a level of origination for which all members of the consortium are eligible.

Executive Order 12866

The contents of this announcement have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the criteria in this announcement.

The potential costs associated with the criteria in this announcement are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these criteria the Secretary has determined that the benefits of the criteria justify the costs.

The Secretary has also determined that the criteria in this announcement do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The criteria in this announcement are consistent with the requirements of the HEA and promote the President's priorities.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary has consulted with the members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee in the development of the criteria in this announcement, and many of the comments of those members have been adopted. However, the timely implementation of the Direct Loan Program for the 1995–1996 academic year does not permit the solicitation of further public comment on the criteria for origination for that year.

To ensure successful implementation of the Direct Loan Program in the second year, schools need to receive program and software training, integrate Direct Loan Program materials into school publications, and interface Direct Loan software and origination procedures with the school's own systems and procedures. The Secretary believes that the training of school personnel, the development and distribution of materials, and the updating of Direct Loan systems and procedures must begin by June 1994. These preparations require that the Secretary, as soon as possible, initiate the school selection process and prescribe the standards and procedures for the origination of loans by schools that are considering whether to participate.

The increase from five percent of new student loan volume in the first year of the program to 40 percent in the second year means that the number of schools participating in the program in the second year is likely to increase from 104 to over 2,000. In light of the preparations required to accommodate the dramatic growth in the Direct Loan Program in the 1995–1996 academic year, the Secretary finds that the requirements for the second-year implementation of the program do not permit the solicitation of further public comment on the criteria for loan origination in that year. Therefore, the Secretary finds that such a solicitation would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Accordingly, under the authority of the Higher Education Act of 1965, as amended, the Secretary announces the criteria for loan origination for the 1995–1996 academic year, as follows:

Criteria for Loan Origination—1995–1996 Academic Year

I. Origination

(a) To be eligible to participate in the first level of origination of the Direct Loan Program, a school must meet the following criteria:

(1) Be currently participating in the Federal Perkins Loan Program or the Federal Pell Grant Program or, for a graduate and professional school, a similar program.

(2) If participating in the Federal Perkins Loan Program, not have exceeded the applicable maximum default rate under section 462(g) of the Higher Education Act (HEA) for the most recent fiscal year for which data are available.

(3) Have participated in at least one of the student financial assistance programs under title IV of the HEA for the three years immediately preceding July 1, 1995.

(4) Not be provisionally certified to participate in programs under title IV of the HEA.

(5) Not be on the reimbursement system of payment in the Federal Pell Grant Program.

(6) Not have received notice that the school is subject to an emergency action or a proposed or final limitation, suspension, or termination action under section 428(b)(1)(T), 432(h), or 487(c) of the HEA.

(7) Not, in the opinion of the Secretary, have had severe performance deficiencies for any of the programs under title IV of the HEA, including deficiencies demonstrated by audits or program reviews submitted or conducted during the five calendar years immediately preceding the date of application to participate in the Direct Loan Program. These performance deficiencies may also include the school's failure to fulfill its responsibilities as an originating school in the program.

(8) If participating in the Federal Pell Grant Program, have submitted Student Aid Reports on a timely basis.

(9) Not be overdue on Federal cash transaction reports required under title IV of the HEA.

(10) Not be overdue on program or financial reports or audits required under title IV of the HEA.

(11) Provide an assurance that the school has no delinquent outstanding debts to the Federal Government, unless (i) those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or (ii) the Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

(b) To be eligible to participate in the second level of origination, a school must meet the criteria in part I (a)(5), (6), and (7) of this announcement.

II. Alternative Origination

A school participating in the Direct Loan Program that is not eligible to originate loans under part I of this announcement must use the services of an alternative originator.

III. Determination of Origination Status

The Secretary may allow a school to originate loans at a level for which it would not otherwise be eligible if the Secretary determines that the school is fully capable of originating loans at that level. The Secretary may also require a school that meets the criteria for the second level of origination to use the services of an alternative originator if the extent to which the school fails to meet other origination criteria merits such an action. A consortium of schools may originate loans at a level of origination for which all members of the consortium are eligible.

(Authority: 20 U.S.C. 1087a *et seq*)

Dated: April 14, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

[FR Doc. 94-9851 Filed 4-25-94; 8:45 am]

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Thursday
April 28, 1994

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC08

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends subpart E of the Student Assistance General Provisions regulations, 34 CFR part 668, Verification of Student Aid Application Information, to implement technical revisions resulting from the Higher Education Amendments of 1992 (Pub. L. 102–325) and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208) and to reduce the administrative burden associated with verification requirements on applicants and institutions. These regulations require institutions to have a system for verifying student aid application information reported by applicants for use in calculating expected family contributions (EFCs) for the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG)), Federal Stafford Loan, Federal Direct Student Loan (FDSL), and Presidential Access Scholarship (PAS) programs.

EFFECTIVE DATE: These regulations take effect on July 1, 1994. When these regulations become effective, they will govern verification of student aid application information for any Title IV, Higher Education Amendments (HEA) program assistance that may be awarded to any student for award years beginning with 1994–95.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, room 4318, Washington, DC 20202–5451. Telephone (202) 708–4601. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Subpart E of the Student Assistance General Provisions regulations (34 CFR part 668) governs the verification of the information that is used to calculate an applicant's expected family contribution (EFC) as part of the determination of an applicant's need for student financial assistance. Based on the need analysis formula established in statute, the EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute towards the applicant's cost of attendance at an institution of higher education.

The changes in these regulations result from a review of current policies and procedures and from recently enacted legislation that renders certain provisions in the current regulations obsolete.

Summary of Changes

Sections 668.51 through 668.61 are amended to delete all references to the Income Contingent Loan (ICL) Program and Quality Control Pilot Project. Program references throughout Subpart E have been changed to reflect the new names of the Title IV, HEA programs.

Sections 668.52(b) and 668.54(a) are amended to delete the definition of Need Analysis Servicer, to delete references to the certification of need analysis servicers, and to delete references to the 30 percent verification limitation.

Sections 668.54 through 668.56 are amended to include the use of an output document and institutional student information reports (ISIRs) in conjunction with the reference to the Student Aid Report (SAR). Output documents and ISIRs will also be used in conjunction with the reference to an SAR for applicants selected for verification under § 668.54(a)(2).

Sections 668.56(a)(5)(i) (A) and (B) and 668.57(d)(2)(i) are deleted since the Department no longer participates in a match with the Social Security Administration for these benefits.

The Secretary also amends § 668.57(a) (2) and (3) to remove the quotation marks before and after "IRS Listing of Tax Account Information" and to make the phrase lower case. This clarifies that the reference is to information that is being requested from IRS that would be used to verify specific data elements, not a specific IRS form. Also, this would accommodate new IRS forms that are continuously being developed through electronic technology to assist tax filers.

Section 668.59 is amended to remove all references to the Pell Grant Index (PGI) and replace the reference with EFC, and to add the new terms output document or ISIRs as they apply. This section is also being amended to delete the Zero PGI Charts.

The regulations also delete the use of the Zero PGI Charts as a tolerance option for applicants who have undergone verification. In the past, the charts have not been widely used and institutions can easily use another tolerance option such as the recalculation of an applicant's EFC. The Department of Education provides the Electronic Needs Analysis System (ENAS) to institutions at no cost. ENAS may be used for recalculating an applicant's EFC.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the technical changes in these final regulations are a direct result of the Higher Education Amendments of 1992, are purely technical, and do not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking is unnecessary and contrary to the public interest.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: April 19, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; Presidential Access Scholarship and Partnership Program, No number assigned; Federal Direct Student Loan Program, 84.268)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.51 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (a) and redesignated paragraph (c) to read as follows:

§ 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, campus-based, Federal Stafford Loan, Federal Direct Student Loan (FDSL), and Presidential Access Scholarship (PAS) programs.

* * * * *

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the Federal Stafford Loan Program that are not located in a State.

3. Section 668.52 is amended by deleting the definition of "Need analysis servicer," by adding, in alphabetical order, the definition of "Institutional student information report," and by revising the definition of "Student aid application" to read as follows:

§ 668.52 Definitions.

* * * * *

Institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant, campus-based, Federal Stafford Loan and PAS programs.

* * * * *

Student aid application means an application approved by the Secretary and submitted by a person to have his or her EFC determined under the Federal Pell Grant, campus-based, Federal Stafford Loan, Federal Direct Loan or PAS programs.

4. Section 668.54 is amended by revising paragraph (a)(2), removing paragraph (a)(3), by redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(3) through (a)(5) respectively, and by revising paragraph (b)(2)(vii)(B) to read as follows:

§ 668.54 Selection of applications for verification.

(a) * * *

(2) An institution shall require each applicant whose application is selected for verification, on the basis of edits specified by the Secretary, to verify all of the applicable items specified in § 668.56.

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(B) A copy of the verified application and, if the applicant applied for a Federal Pell Grant, pages 1 and 3 of the applicant's SAR or a copy of the applicant's electronic SAR or ISIR.

* * * * *

5. Section 668.55 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 668.55 Updating information.

* * * * *

(b) * * *

(2) An applicant for a Federal Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or signs his or her ISIR at the institution.

(c) If an applicant has received Federal Pell Grant, campus-based, Federal Stafford Loan, FDSL, or PAS program assistance for an award year, and the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Federal Pell Grant, campus-based, FDSL or PAS program assistance or certifying a Federal Stafford Loan application; and

(2) Is not required to adjust the Federal Pell Grant, campus-based, FDSL, or PAS program assistance previously awarded to the applicant for that award year, or any previously certified Federal Stafford Loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

* * * * *

6. Section 668.56 is amended by revising paragraphs (a)(5)(i) and (b) introductory text to read as follows:

§ 668.56 Items to be verified.

(a) * * *

(5) * * *

(i) Social security benefits if the institution has reason to believe that those benefits were received;

* * * * *

(b) If an applicant selected for verification submits an SAR or output document to the institution or the institution receives the applicant's ISIR, within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

* * * * *

7. Section 668.57 is amended by revising paragraphs (a)(2) and (d)(2) to read as follows:

§ 668.57 Acceptable documentation.

(a) * * *

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of an IRS form which lists tax account information.

* * * * *

(d) * * *

(2) Social security benefits if the institution has reason to believe that the applicant has incorrectly reported Social Security benefits received by the applicant, applicant's parents, and any other children of the applicant's parents who are members of the applicant's household, in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student. The applicant shall verify Social Security benefits by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year for the appropriate individuals listed above or, at the institution's option, a statement signed by both the applicant and the applicant's parent, in the case of a dependent student, or by the applicant, in the case of an independent student, certifying that the amount listed on the applicant's aid application is correct; and

* * * * *

§ 668.58 [Amended]

8. In 668.58, paragraphs (a)(1)(ii) and (a)(2)(ii)(B) are amended by removing the term "CWS" and adding in its place the words "Federal Work-Study."

9. Section 668.59 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(2), (b)(2)(i) (B) and (C), (b)(2)(ii) (A) and (B) to read as follows:

§ 668.59 Consequences of a change in application information.

(a) For the Federal Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her application information to the Secretary for corrections if—

(i) The institution recalculates the applicant's EFC, determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Federal Pell Grant award; or

* * * * *

(2) An institution need not require an applicant with a reported EFC of zero on his or her SAR or ISIR to resubmit that SAR to the Secretary or correct the ISIR at the institution, if the institution determines that the applicant's EFC remains at zero on the basis of the verified information.

* * * * *

(b) * * *
(2) * * *
(i) * * *
(B) Recalculate the applicant's Federal Pell Grant award on the basis of the EFC on the corrected SAR or ISIR; and
(C) Disburse any additional funds under that award only if the applicant provides the institution with the corrected SAR or ISIR and only to the extent that additional funds are payable based on the recalculation.
(ii) * * *
(A) May disburse the applicant's Federal Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her application information to the Secretary; and
(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the institution receives the corrected SAR or ISIR.

* * * * *

10. Section 668.60 is amended by revising paragraphs (b) introductory text, (b)(1)(i)(A), (b)(1)(iii), (c)(1) and (2) introductory text, and (d) to read as follows:

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

* * * * *

(b) For purposes of the campus-based, Federal Stafford Loan, FDSL and PAS programs—
(1) * * *
(i) * * *
(A) Disburse any additional Federal Perkins Loan, FDSL, FSEOG or PAS funds to the applicant;

* * * * *

(iii) The applicant shall repay to the institution any Federal Perkins Loan, FDSL, FSEOG, or PAS payments received for that award year;

* * * * *

(c) * * *
(1) An applicant may submit a verified SAR to the institution or the institution may receive a verified ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**. If the institution receives a verified SAR or ISIR during the established additional time period, and the EFC on the two SARs or ISIRs are different, payment must be based on the higher of the two EFCs.
(2) If the applicant does not provide the requested documentation, and if necessary, a verified SAR or ISIR, within the additional time period referenced in paragraph (c)(1) of this section the applicant—

* * * * *

(d) The Secretary may determine not to process any subsequent application for Federal Pell Grant, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, PAS, FDSL, or Federal Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

* * * * *

11. Section 668.61 is amended by revising paragraph (a)(2)(ii)(B) and adding an OMB control number to read as follows:

§ 668.61 Recovery of funds.

(a) * * *
(2) * * *
(ii) * * *
(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, FDSL, FSEOG or PAS funds to the applicant.

* * * * *

§§ 668.58, 668.59 [Amended]

12. In 34 CFR part 668 remove the terms "need-based Income Contingent Loan (ICL)," "and need-based ICL," and "or need-based ICL" in the following places:
a. Section 668.58(a)(2)(i) and (a)(2)(ii); and
b. Section 668.59(c) introductory text and (c)(1)(ii).

§§ 668.55, 668.58, 668.59, 668.60, 668.61 [Amended]

13. In 34 CFR Part 668 add the word "Federal" before the words "Pell Grant", "Stafford Loan", "Perkins Loan", or "Supplemental Educational Opportunity Grant" in the following places each time they appear:
a. Section 668.55(d)(2)(twice); and
b. Section 668.58(a)(1)(i), (a)(1)(iii)(three times), (a)(2)(i), (a)(2)(iii)(A), (a)(2)(iii)(B)(twice), (c), (d)(1), and (d)(2); and
c. Section 668.59(b) introductory text, (b)(1), (c) introductory text, (c)(1)(ii), and (d); and
d. Section 668.60(b)(1)(i)(C), (b)(1)(i)(D), (b)(1)(ii), (b)(3)(twice), (c) introductory text, (c)(2)(i), (c)(2)(ii), and (e)(2)(twice); and
e. Section 668.61(a)(2)(ii)(B).

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Part III

Department of Education

34 CFR Part 602

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840–AB82

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Secretary's recognition of accrediting agencies in order to implement provisions added to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993. The purpose of the Secretary's recognition of accrediting agencies is to assure that those agencies are, for HEA and other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

EFFECTIVE DATE: These regulations take effect on July 1, 1994, with the exception of §§ 602.4, 602.10, and 602.27. These sections will become effective after the information collection requirements contained therein have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3036, ROB–3, Washington, DC 20202–5244. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In order to approve a postsecondary education institution to participate in the student financial assistance programs authorized under Title IV of the HEA (referred to as "Title IV, HEA programs") and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and many other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an education program beyond the secondary level in the State in which it is located. In addition, to participate in the Title IV, HEA programs, the institution must be certified by the Secretary as administratively capable and financially responsible. Thus, the HEA provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to Title IV, HEA programs is opened only to those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad."

While the concept of a triad of entities responsible for gatekeeping has had a long history, originating in 1952, the Higher Education Amendments of 1992, Public Law 102–325, significantly increased the gatekeeping responsibilities of each member of the triad. Specifically, Congress amended the HEA to provide for a new part H of Title IV entitled "Program Integrity Triad." Under the new part H, the requirements that accrediting bodies must meet if they are to be recognized by the Secretary as "gatekeepers" for Title IV or other Federal purposes are specified in detail. Part H also provides a new oversight responsibility for States: The State Postsecondary Review Program. Altogether, part H establishes a set of responsibilities for accrediting agencies, States, and the Secretary that creates a stronger and more coordinated evaluation of institutions that participate, or wish to participate, in the Title IV, HEA programs.

The Secretary recognizes that the approach to significantly increased gatekeeping activity outlined in the statute for the three members of the triad is a new one. This approach will require leadership in both implementation and evaluation if it is to achieve the effectiveness that Congress intended. The Secretary will take steps to assure that the various responsibilities of the triad members are carried out in a manner that, in fact, results in the identification of institutions that should not be eligible to participate in the Title IV, HEA programs, on the basis of either the quality of education they offer or their inability to handle program funds. At the same time, the Secretary is committed to carrying out the responsibility for coordinating the activities of the triad members that are inherent in the statute in a manner that causes the least burden to institutions participating in the Title IV, HEA programs.

To these ends, the Secretary is committed to effective management of the gatekeeping function. The Secretary will review carefully the applications of accrediting bodies and the standards and operating plans proposed by State Postsecondary Review Entities (SPREs) under the State Postsecondary Review Program to insure that they meet the requirements of the statute and these regulations and will enable these triad agencies to fulfill their statutory purposes. The Secretary will also place a priority on the completion of the "Postsecondary Education Participation System," the Department's new integrated data base, which will contain the information that the Secretary generates in the course of the Secretary's oversight of institutions participating in Title IV, HEA programs. The Secretary will use the data base to inform accrediting bodies and SPREs of actions taken by the Secretary so that they may in turn carry out their responsibilities. This expanded data base is also critical to the Secretary's effective selection of institutions for program review.

Monitoring the results of the gatekeeping process is a very important key to effective management. The Secretary will evaluate the activities of accrediting agencies, SPREs, and the Department to determine their effectiveness in improving the integrity of institutions participating in Title IV programs and will take such steps as may be indicated to improve the results. Finally, as provided in the statute, the Secretary will seek the advice and counsel of the National Advisory Committee on Institutional Quality and Integrity in evaluating the effectiveness of the triad.

The Secretary believes that the approach best suited to achieving the objectives of the statute is a complementary one, with each member of the triad focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. States, in addition to providing the legal authority to operate within the state required for participation in the Title IV, HEA programs, will review institutions that meet certain statutory review criteria related to institutional performance in

the Title IV, HEA programs. The focus of the Secretary's evaluation of institutions is on the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs.

While the functions and responsibilities of each of the triad members are generally different, the statute does require, in some instances, that all members of the triad evaluate similar areas. For the most part, the principle of complementary functions will lead to the members evaluating those same areas from different perspectives for different purposes. For example, all three of the triad members are required to examine the finances of an institution. If each looks at financial strength from a perspective complementary to that of the others, accrediting agencies would focus principally on the capacity of the institution to continue to offer programs at a level of quality sufficient to meet accrediting agency standards and to fulfill the institution's mission over a 5–10 year period of accreditation. The emphasis of a review by a SPRE would be on whether or not the institution possesses the full range of resources needed to serve students currently attending the institution. The Secretary's responsibilities focus on the institution's finances in light of its ability to provide the services described in its official publications and statements, to provide the administrative resources necessary to comply with its Title IV, HEA program responsibilities, and to meet all of its financial obligations, including, but not limited to, refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

Despite the Secretary's efforts to encourage complementary functions for each of the triad members, it is theoretically possible that, in some instances, an institution could be subject to three different standards regulating the same area of operation. For this reason, where a Title IV standard has been promulgated at the Federal level, the Secretary expects accrediting agencies and States to take this into account in establishing their own standards to insure that varying standards do not pose an unnecessary burden on institutions. It is also important that accrediting agencies and States not impose any standard that is weaker than a comparable Title IV, HEA program standard. The Secretary believes coordination of this is a federal responsibility.

In view of the complementary approach to the functions of the triad members, the Secretary believes, for example, that institutions should not have to develop different methodologies to provide data that the three members of the triad may require. The Secretary also believes that, to the extent feasible, any other requests for data about the institution, its students, or its graduates should rely on information already in the institution's possession. To that end, the Secretary expects accrediting agencies and States either to accept student data based on the methodology that will be specified in the regulations governing "Student Right to Know," also mandated by the Higher Education Amendments of 1992, or, where the institution may have other methodologies for calculating data, such as a system designed to provide data to a State higher education commission or other State agency, to accept data in the format already being used by the institution. Similarly, the Secretary expects accrediting agencies and SPREs to use the audited financial statements institutions are now required to provide to the Secretary on an annual basis to the extent those statements are compatible with the nature of the reviews conducted under their respective standards.

The Secretary also recognizes that other Federal agencies, such as the Department of Labor and the Veterans Administration, also regulate institutions in some areas that are similar to those included in part H. The suggestion has been made that the Secretary should promulgate Federal standards in the areas of overlap so that institutions would not be subject to varying standards developed by other Federal agencies and the triad members. However, the Secretary interprets part H as permitting States and accrediting agencies to establish their own standards, as opposed to using a Federal standard, and also believes that this is the most effective approach. In addition, it is not clear how the requirements of the different agencies are compatible with the requirements of part H. The purposes of these programs administered by other agencies may be very different. As a result, the Secretary has not pursued this alternative. The Secretary does believe that it would be useful to explore how the varying requirements of other Federal agencies that are similar to those of part H might be coordinated to reduce any burden on institutions and will initiate such exploration.

The Secretary believes that, where possible, data developed at the national level should be made available to institutions, as well as to States and accrediting agencies to assist them in carrying out their responsibilities under part H. In particular, data concerning labor markets and compensation for specific fields and information concerning graduation and withdrawal rates at various types of institutions may be helpful to both triad members and institutions. The Secretary will facilitate the development of this type of information and, where possible, under the auspices of the Department, will coordinate the development of data that will be helpful to institutions and the triad.

Finally, as part of the commitment to providing leadership to the triad, the Secretary will convene representatives of the triad members and institutions to exchange information about the gatekeeping process and to discuss how the triad is functioning, both in identifying institutions whose performance is questionable and in reporting requirements that have proven to be unreasonably burdensome. The Secretary invites comments concerning the functioning of the triad, as it is implemented through these and other regulations governed by part H. The Secretary will seek improvement, where possible, within existing regulations and will propose modifications to regulations and to the statute itself if experience indicates those changes are both necessary to achieve effective gatekeeping, with minimal burden, and compatible with the need to maintain, and assure the public of, the integrity of the Title IV, HEA programs.

On January 24, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 602 in the Federal Register (59 FR 3578). The NPRM included, on pages 3578–3601, a thorough discussion of the major issues addressed by the proposed regulations. The following is a brief summary of the major proposed changes to the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies that were contained in the NPRM:

1. As required by section 496(m) of the HEA, the proposed regulations authorized the Secretary to recognize only those accrediting agencies that accredit institutions of higher education or higher education programs for the purpose of enabling those institutions or programs to establish eligibility to participate in programs administered either by the Secretary or by other Federal agencies.

2. As required by section 496(a) of the HEA, the proposed regulations required accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA to be administratively and financially

separate from and independent of any related, associated, or affiliated trade association or membership organization. In accordance with the statute, the proposed regulations allowed the Secretary to waive this requirement under certain conditions.

3. The proposed regulations added two new steps to the process by which accrediting agencies are recognized by the Secretary. First, the Secretary proposed to give an agency seeking recognition the opportunity to respond in writing to the designated Department official's analysis of its application for recognition before the application was reviewed by the National Advisory Committee on Institutional Quality and Integrity. Second, after the Advisory Committee's review of the agency's application and recommendation to the Secretary, the Secretary proposed to give both the agency and the designated Department official an opportunity to contest the Advisory Committee's recommendation.

4. In accordance with section 496(n) of the HEA, the proposed regulations permitted the Department, at the Secretary's discretion, to conduct unannounced site visits to an accrediting agency or its member institutions or programs as part of the Department's analysis of the agency's application for recognition or its compliance with the requirements for recognition.

5. In accordance with section 496(l) of the HEA, the proposed regulations allowed the Secretary to limit, suspend, or terminate an agency's recognition if the Secretary determined that the agency failed to meet the requirements for recognition.

6. The proposed regulations eliminated the provision contained in previous regulations that, in order to demonstrate experience in accreditation, an agency had to demonstrate that its policies, evaluation methods, and decisions were accepted throughout the United States by recognized accrediting agencies.

7. As required by section 496(c)(1) of the HEA, the proposed regulations required an accrediting agency whose accreditation enables the institutions it accredits to participate in programs authorized under the HEA to conduct, in addition to its regular announced on-site review of an institution, at least one unannounced on-site review of each institution that provides prebaccalaureate vocational education or training.

8. The proposed regulations required accrediting agencies to assess any new or substantively changed program before including it in the agency's previous grant of accreditation.

9. As required by section 496(a)(5) of the HEA, the proposed regulations required accrediting agencies to have standards that assess curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity as appropriate to the specified scale of operation; student support services; recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising; program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered; measures of program length in clock hours or credit hours; success with respect to student achievement in relation to the institution's mission; default rates in student loan programs under Title IV of the HEA; record of student complaints received by, or available to, the accrediting agency; and the institution's compliance with its program responsibilities under Title IV of the HEA.

10. As required by section 484B of the HEA, the proposed regulations required accrediting agencies to have a standard that assesses an institution's practice of making refunds to students.

11. The proposed regulations required an accrediting agency to take adverse action against an institution or program that failed to bring itself into compliance with agency standards within a time frame established by the agency. The proposed regulations permitted this time frame to exceed 18 months only for cause.

12. As required by section 496(c) of the HEA, the proposed regulations required accrediting agencies whose accreditation enables institutions to participate in Title IV, HEA programs to take special action whenever institutions establish new branch campuses. Specifically, agencies must approve a business plan for the branch before its opening and conduct an on-site review within six months.

13. As required by section 496(c) of the HEA, the proposed regulations required accrediting agencies to conduct an on-site review within six months at any institution that undergoes a change in ownership that results in a change in control.

14. As required by section 496(c) of the HEA, the proposed regulations required that any institution that enters into a teach-out agreement with another institution must agree to submit to its accrediting agency for approval a teach-out agreement that is consistent with applicable standards and regulations.

Changes Resulting From Public Comment

As a result of the comments received concerning the NPRM, and as discussed in detail in the appendix, the Secretary has made the following significant changes in the final regulations.

1. The term "prebaccalaureate vocational education" has been deleted from these final regulations. The term "vocational education" has been redefined to be "an instructional program, below the bachelor's level, designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the instructional program." This definition is consistent with that used for the term "vocational program" in the final regulations governing the State Postsecondary Review Program. This definition was chosen because it is basically the same as the Integrated Postsecondary Education Data System (IPEDS) glossary definition of an "occupationally specific program," and institutions already use this term in reporting enrollment data for various types of vocational education. The advantage in using this definition is that the IPEDS inventory of occupationally specific programs provides a list of instructional programs which, if offered by an institution, subject the institution to an unannounced inspection by its accrediting agency.

2. A new section, § 602.5—Notice to accrediting agencies of Federal actions, has been added that provides for the Secretary to notify an accrediting agency if the Secretary takes an action against an institution or program accredited by the agency, if the Secretary learns of an action taken by another Federal agency against the institution or program, or if the institution is referred for review under the State Postsecondary Review Program.

3. Time frames have been added for the designated Department official to provide an accrediting agency with the staff analysis of its application for recognition and for the agency to respond to that analysis, if it so desires.

4. The provision that an accrediting agency may request that the Secretary reconsider a decision to deny recognition or to limit, suspend, or terminate the agency's recognition during the recognition period has been deleted.

5. The requirement that institutional accrediting agencies must conduct unannounced site visits to institutions that offer prebaccalaureate vocational education has been replaced with a requirement that those agencies must

conduct unannounced inspections at each institution that offers vocational education for the purpose of determining whether, at a minimum, the institution has the personnel, facilities, and resources it claimed to have either during its most recent on-site review by the accrediting agency or in subsequent reports to the agency. Accrediting agencies are free to determine the procedures for conducting the unannounced inspections. An unannounced inspection does not have to be as comprehensive as an agency's full accreditation or preaccreditation review of an institution or program, unless the agency wishes it to be.

6. The substantive-change requirement has been revised to clarify the types of changes that require prior approval by an accrediting agency before they can be included in the institution's accreditation. The substantive change requirement applies only to institutional accrediting agencies.

7. The specific language included in the NPRM for each of the 12 required accreditation standards has been deleted. The section now simply repeats the statutory language for each required standard.

8. The requirement that accrediting agencies must have a standard that assesses an institution's practice of making refunds to students has been eliminated.

9. The time limit for institutions or programs to come into compliance with agency standards has been changed. For programs of less than one year in length, the time limit is now 12 months. For programs that are at least one year in length but less than two years, the time limit is 18 months. For programs that are at least two years in length, the time limit is 24 months.

10. A requirement has been added that accrediting agencies must notify the Secretary at the same time they notify an institution or program of a final adverse accrediting action.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, more than 1800 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Included in this analysis are comments received during several public hearings and other meetings held by the Department throughout the United States for purposes of obtaining comment on the proposed regulations.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for effective and efficient administration.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Paperwork Reduction Act of 1980

Sections 602.4, 602.10, and 602.27 of these regulations contain information collection requirements. In addition, § 602.21(b)(7) contains specific record retention requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education has submitted a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h)).

The annual reporting burden for this collection of information is estimated to be 47 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This annual reporting estimate takes into account the fact that the average recognition period granted to accrediting agencies is five years. The total annual reporting burden for the estimated 96 respondents is 4,512 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. Comments must be received by May 31, 1994.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed regulations and on the Department's own review, the Secretary has determined that these regulations do not require the transmission of information concerning accrediting agencies that is being gathered by or is available from any other agency or authority of the United States. Where specific provisions of these regulations require the transmission of information concerning institutions or programs that is similar to that being collected by the Department for other purposes, such as for the State Postsecondary Review Program or the Department's review of institutions seeking to become certified to participate in the Title IV, HEA programs, these regulations have been modified to minimize the burden on institutions. A detailed discussion of the changes to the regulations is provided in the appendix to these regulations.

List of Subjects in 34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: April 20, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 602 to read as follows:

PART 602—SECRETARY'S PROCEDURES AND CRITERIA FOR THE RECOGNITION OF ACCREDITING AGENCIES

Subpart A—General Provisions

Subpart B—Recognition and Termination Procedures

Subpart C—Criteria for Secretarial Recognition

Authority: 20 U.S.C. 1099b, unless otherwise noted.

Subpart A—General Provisions

§ 602.1 Purpose.

(a)(1) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. The purpose of the Secretary's recognition of agencies is to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or the higher education programs they accredit.

(2) The Secretary's recognition of an accrediting agency is based on the Secretary's determination that the agency satisfies the requirements of this part.

(b) The Secretary only grants recognition to those accrediting agencies that—

(1) Accredit—

(i) Institutions of higher education, provided that accreditation by the agency is a required element in enabling those institutions to establish eligibility to participate in HEA programs; or

(ii) Institutions of higher education or higher education programs, provided that accreditation by the agency is a required element in enabling those institutions or programs to establish eligibility to participate in other programs administered by the Department or by other Federal agencies;

(2) Meet the organization and membership requirements specified in § 602.3;

(3) For agencies already recognized by the Secretary, comply with the information sharing requirements specified in § 602.4; and

(4) Satisfy the criteria for Secretarial recognition specified in Subpart C of this part.

(Authority: 20 U.S.C. 1099b)

§ 602.2 Definitions.

The following definitions apply to terms used in this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's established standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer evaluations and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action means the denial, withdrawal, suspension, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program, except that placing an institution or program on probation or issuing a show cause order against an institution or program is not an adverse accrediting action unless it is so defined by the accrediting agency.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means

(1) A location of an institution of higher education that meets the definition of this term in 34 CFR 600.2, and

(2) Any location of an institution, other than the main campus, at which the institution offers at least 50 percent of an educational program.

Designated Department official means the official in the Department of Education to whom the Secretary has delegated the responsibilities indicated in this part.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program that is not subject to any further appeal within the agency.

Institution of higher education or *institution* means an educational institution that qualifies or may qualify as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or *recognized agency* means an accrediting agency that is recognized by the Secretary under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies that the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited by the agency or has applied for accreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the accrediting agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Teach-out agreement means a written agreement between accredited institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program complete the program.

Vocational education means an instructional program, below the bachelor's level, designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the instructional program.

(Authority: 20 U.S.C. 1099b)

§ 602.3 Organization and membership.

(a) The Secretary recognizes only the following categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991;

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in programs authorized under this Act; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those institutions or programs, or both, to participate in Federal programs not authorized under this Act; and

(4) An accrediting agency that, for purposes of determining eligibility for Title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii)(A) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section; or

(B) Obtains a waiver from the Secretary under paragraph (d) of this section of the "separate and independent" requirements contained in paragraph (b) of this section.

(b) For purposes of this section, "separate and independent" means that—

(1) The members of the agency's decision-making body—who make its accrediting decisions, establish its accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, with no less than one-seventh of the body consisting of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency's budget is developed and determined by the agency without review by or consultation with any other entity or organization.

(c) The Secretery considers that any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization does not violate the provisions of paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d)(1) Upon request of an accrediting agency described in paragraph (a)(4) of this section, the Secretary waives the "separate and independent" requirements of this section if the agency demonstrates that—

(i) The agency has been listed by the Secretary as a nationally recognized agency on or before October 1, 1991; and

(ii) The existing relationship between the agency and the related, associated, or affiliated trade association or membership organization does not compromise the independence of the accreditation process.

(2) To demonstrate that the existing relationship between the agency and the related, associated, or affiliated trade association or membership organization does not compromise the independence of the accreditation process, the agency must show that—

(i) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying the accreditation decisions of the agency;

(ii) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions; and

(iii) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(3) An agency seeking a waiver of the "separate and independent" requirements contained in this section must apply for the waiver each time it seeks recognition or renewal of recognition by the Secretary.

(Authority: 20 U.S.C. 1099b)

§ 602.4 Submission of information to the Secretary by recognized accrediting agencies.

Each accrediting agency recognized by the Secretary shall submit to the Secretary—

(a) Notice of final accrediting actions taken by the agency with respect to the institutions and programs it accredits;

(b) A copy of any annual report prepared by the agency;

(c) A copy, updated annually, of the agency's directory of accredited institutions and programs;

(d) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if so requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(e) Upon request of the Secretary, information regarding an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including its eligibility to participate in Title IV, HEA programs, for the purpose of assisting the Secretary in resolving problems with the institution's participation in these programs;

(f) The name of any institution or program accredited by the agency that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse and the reason for the agency's concern; and

(g) Any proposed change in the agency's policies, procedures, or accreditation standards that might alter the agency's—

(1) Scope of recognition; or

(2) Compliance with the requirements of this part.

(Authority: 20 U.S.C. 1099b)

§ 602.5 Notice to accrediting agencies of Federal actions.

(a) If the Secretary takes an action against an institution or program, the Secretary notifies the appropriate accrediting agency or agencies no later than 10 days after taking that action.

(b) If the Secretary is informed that another Federal agency is taking an action against an institution or program, the Secretary notifies the appropriate accrediting agency or agencies as soon as possible but no later than 10 days after learning of that action.

(c) If an institution is referred for review under the State Postsecondary Review Program, the Secretary notifies the institution's accrediting agency or agencies at the same time the Secretary notifies the State Postsecondary Review Entity.

(Authority: 20 U.S.C. 1099b)

Subpart B—Recognition and Termination Procedures

§ 602.10 Application for recognition.

(a) An accrediting agency seeking initial or renewed recognition by the

Secretary as a nationally recognized accrediting agency submits a written application to the Secretary. The application for recognition consists of—

(1) A statement of the agency's requested scope of recognition;

(2) Evidence of the agency's compliance with the criteria for recognition set forth in this part; and

(3) Supporting documentation.

(b) An accrediting agency's application for recognition constitutes a grant of authority to the Secretary to conduct site visits and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(c) The Secretary does not make available to the public any confidential agency materials examined by Department personnel or the Secretary as part of the Secretary's evaluation of either an accrediting agency's application for recognition or its compliance with the requirements for recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Preliminary review by the Secretary.

(a) Upon receipt of an accrediting agency's application for initial or renewed recognition, the Secretary—

(1) Establishes a schedule for the review of the agency by the designated Department official, the National Advisory Committee on Institutional Quality and Integrity, and the Secretary;

(2) Publishes notice of the agency's application in the **Federal Register**, inviting public comment on the agency's compliance with the requirements for recognition and stipulating a deadline for receipt of public comment; and

(3) Provides State Postsecondary Review Entities and other appropriate organizations with copies of the notice described in paragraph (a)(2) of this section.

(b)(1) The designated Department official analyzes the accrediting agency's application to determine whether the agency satisfies the requirements of this part, taking into account all available relevant information concerning the compliance of the agency with the requirements for recognition. The analysis includes—

(i) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, institutions or programs it accredits;

(ii) Review of public comment and other third-party information received or solicited by the Secretary, as well as any other information provided to the Secretary, concerning the performance of the agency in relation to the requirements of this part; and

(iii) Review of complaints or legal actions involving the agency.

(2) The designated Department official's evaluation may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency, relative to their compliance with the accrediting agency's standards, the effectiveness of the agency's standards, and the agency's application of those standards.

(c) The designated Department official—

(1) Prepares a written analysis of the accrediting agency;

(2) Sends the analysis and all supporting documentation, including all third-party comments received by the Secretary, to the agency no later than 45 days before the Advisory Committee meeting; and

(3) Specifies a time period, which will be no later than 14 days before the Advisory Committee meeting, during which the agency may provide the designated Department official with any written comments on the analysis.

(d) The accrediting agency provides any written comments it chooses to make to the designated Department official before the expiration of the time period specified in paragraph (c)(3) of this section.

(e) The designated Department official provides the Advisory Committee with the accrediting agency's application and supporting documentation, the designated Department official's analysis of the application, all information relied upon by the designated Department official in developing the analysis, any response by the agency to the analysis or third-party comment, any Department concurrence with or rebuttal to the agency's response, and any third-party information the Secretary receives regarding the agency.

(f) The designated Department official provides the agency with a copy of any Department rebuttal provided to the Advisory Committee under paragraph (e) of this section.

(g) If the designated Department official fails to provide the agency with the materials described in paragraph (c)(2) of this section within the 45-day time frame specified in that section, the agency may request that the Advisory Committee defer action on its application until the next meeting of the Advisory Committee.

(h) At least 30 days before the Advisory Committee meeting, the Secretary publishes a notice of the meeting in the **Federal Register** and invites interested parties, including those who submitted third-party comments concerning an agency's compliance with the requirements for recognition, to make oral presentations before the Advisory Committee.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Review by the National Advisory Committee on Institutional Quality and Integrity.

(a)(1) The Advisory Committee considers an accrediting agency's application at a public meeting and invites the designated Department official, the agency, and other interested parties to make oral presentations at the meeting.

(2) The designated Department official arranges for a transcript to be made of the Advisory Committee meeting.

(b) At the conclusion of the meeting, the Advisory Committee recommends that the Secretary approve or deny recognition of the accrediting agency or defer a decision on the agency's application.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Advisory Committee recommends recognition of an agency if the agency complies with each of the requirements of this part.

(2) The Advisory Committee may recommend recognition despite finding that the agency failed to comply with each of the requirements of this part if the Advisory Committee provides the Secretary with a detailed explanation as to why it believes the agency's failure to comply with the particular requirement(s) does not require denial or deferral.

(3) If the Advisory Committee recommends recognition, the Advisory Committee also recommends the scope of recognition for the agency and a recognition period.

(4) If the Advisory Committee recommends denial of recognition, the Advisory Committee specifies the reasons for the recommendation and the requirements of this part that the agency failed to meet.

(5) If the Advisory Committee recommends deferral of a decision on the agency's application, the Advisory Committee specifies the reasons for the recommendation, the requirements of this part that it believes the agency has not met, and a recommended deferral period.

(d) After the meeting, the Advisory Committee forwards its written recommendations concerning recognition to the Secretary.

(Authority: 20 U.S.C. 1099b, 1145)

§ 602.13 Review and decision by the Secretary.

(a) The Secretary determines whether to grant national recognition to an applicant accrediting agency based on

the Advisory Committee's recommendation and the full record of the agency's application, including all oral and written presentations to the Advisory Committee by the agency, the designated Department official, and interested third parties.

(b)(1) Before making a final decision, the Secretary affords both the designated Department official and the accrediting agency an opportunity to contest, in writing, the Advisory Committee's recommendation. If either the agency or the designated Department official wishes to contest the recommendation, that party shall notify the Secretary and the other party no later than 10 days after the Advisory Committee meeting.

(2) If the party contesting the Advisory Committee's recommendation wishes to make a written submission to the Secretary, the Secretary must receive that submission no later than 30 days after the Advisory Committee meeting. However, the contesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The contesting party shall simultaneously provide a copy of its submission to the other party.

(3) If the noncontesting party wishes to respond in writing to the Secretary, the Secretary must receive that submission no later than 30 days after the noncontesting party receives the contesting party's submission. However, the noncontesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The noncontesting party shall simultaneously provide a copy of its response to the contesting party.

(4) If the Advisory Committee's recommendation is contested, the Secretary renders a final decision after taking into account the two parties' timely written submissions, if any.

(c) The Secretary approves the accrediting agency for national recognition if the Secretary determines that the agency satisfies each of the requirements contained in this part.

(d) The Secretary approves the accrediting agency for national recognition even if the agency does not satisfy each of the requirements contained in this part if the Secretary determines that the agency's effectiveness is not impaired by the noncompliance.

(e) If the Secretary approves the accrediting agency for national recognition, the Secretary defines—

(1) The scope of the agency's recognition for Federal purposes, which shall include the—

(i) Geographic area;

(ii) Degrees and certificates awarded;

(iii) Types of institutions, programs, or both that the agency may accredit; and

(iv) Preaccreditation status(es), if any, that the Secretary approves for recognition; and

(2) The recognition period, which does not exceed five years.

(f) If the Secretary denies recognition to the accrediting agency or grants recognition for a scope narrower than that requested by the agency, the Secretary indicates in writing the reasons for that decision.

(g) If the Secretary defers a decision on the accrediting agency's application, the Secretary—

(1) Indicates in writing the reasons for the deferral and the deferral period; and

(2) Automatically extends any previously granted recognition period until the Secretary reaches a decision on the renewal application.

(h) If the Secretary does not reach a final decision on an accrediting agency's application for renewal of recognition before the expiration of the agency's recognition period, the Secretary automatically extends the previously granted recognition period until the Secretary reaches a decision on the renewal application.

(Authority: 20 U.S.C. 1099b)

§ 602.14 Limitation, suspension, or termination of recognition.

(a)(1) The Secretary may limit, suspend, or terminate the recognition of an accrediting agency before completion of its previously granted recognition period if the Secretary determines, after notice and opportunity for a hearing, that the agency fails or has failed to satisfy any of the requirements of this part.

(2)(i) If the agency requests a hearing, the hearing is conducted by the Advisory Committee or by a subcommittee of five members of the Advisory Committee, selected by the Secretary, if the Secretary determines that a more timely hearing is necessary than can be accommodated by the schedule of the full Advisory Committee.

(ii) If the Secretary selects a subcommittee of the Advisory Committee instead of the full Advisory Committee, the agency may challenge the membership of the subcommittee on grounds of conflict of interest on the part of one or more of the members of the subcommittee, and the Secretary replaces the member(s) if the agency's challenge is successful.

(iii) The designated Department official arranges for a transcript to be made of the hearing.

(b) The designated Department official begins a limitation, suspension, or termination proceeding against an accrediting agency by sending the agency a notice that—

(1) Informs the agency of the Secretary's intent to limit, suspend, or terminate its recognition;

(2) Identifies the alleged violations of the governing regulations that constitute the basis for the action;

(3) Describes the limits to be imposed if the Secretary seeks to limit the accrediting agency;

(4) Specifies the effective date of the limitation, suspension, or termination; and

(5) Informs the agency that it may—

(i) Submit to the designated Department official a written response to the notice no later than 30 days after it receives the notice; and

(ii) Request a hearing, which shall take place in Washington, DC, before the Advisory Committee or subcommittee if the agency submits a hearing request to the designated Department official no later than 30 days after it receives the notice.

(c)(1) As part of its response to the limitation, suspension, or termination notice or its hearing request, if any, the accrediting agency shall identify the issues and facts in dispute and its position with regard to those issues and facts.

(2) After receipt of the agency's response and hearing request, if any, the designated Department official—

(i) Transmits the limitation, suspension, or termination notice and the agency's response, if any, to that notice to the Advisory Committee or subcommittee; and

(ii) Establishes the date and time of any hearing before the Advisory Committee or subcommittee.

(d)(1) Except as provided in paragraph (d)(2) of this section, if a hearing is held, the Advisory Committee or subcommittee shall allow the designated Department official, the accrediting agency, and any interested party to make an oral or written presentation. That presentation may include the introduction of written and oral evidence.

(2) If the designated Department official and the accrediting agency each agree, the Advisory Committee or subcommittee review shall be based solely on the written materials submitted to it under paragraph (c)(2)(i) of this section.

(e)(1) After the Advisory Committee or subcommittee reviews the presentations, it shall issue an opinion in which it—

(i) Makes findings of fact based upon the evidence presented;

(ii) Recommends whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(iii) Provides the reasons for that recommendation.

(2) The Advisory Committee or subcommittee shall—

(i) Transmit its written opinion to the Secretary; and

(ii) Provide a copy of its opinion to the designated Department official and the accrediting agency.

(f)(1) Unless the Advisory Committee's or subcommittee's recommendation is appealed, after receiving the recommendation, the Secretary issues a decision on whether to limit, suspend, or terminate the agency's recognition, based upon the Advisory Committee's or subcommittee's recommendation and the full record before the Advisory Committee or subcommittee.

(2) Either the accrediting agency or the designated Department official may appeal the Advisory Committee's or subcommittee's recommendation by filing a notice of appeal with the Secretary within 10 days of receipt of the Advisory Committee's or subcommittee's recommendation. If either party files an appeal with the Secretary, that party shall simultaneously provide a copy of the notice of appeal to the other party.

(3) The party appealing the Advisory Committee's or subcommittee's recommendation has 30 days after its receipt of the recommendation to make a written submission to the Secretary challenging the recommendation. However, the appealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee. The appealing party shall simultaneously provide a copy of the submission to the other party.

(4) The nonappealing party has 30 days from the date it receives the appealing party's submission to file a written response to the Secretary regarding the submissions of the appealing party and shall simultaneously provide the appealing party with a copy of its response. The nonappealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee.

(5) If the Advisory Committee's or subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal.

(Authority: 20 U.S.C. 1099b)

§ 602.15 Appeals procedures.

An accrediting agency may appeal the Secretary's final decision under this part regarding the agency's recognition to the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

§ 602.16 Publication of list of recognized agencies.

(a) The Secretary periodically publishes in the **Federal Register** a list of recognized accrediting agencies and each agency's scope of recognition.

(b) If the Secretary denies recognition to a previously recognized accrediting agency, or limits, suspends, or terminates its recognition during a previously granted recognition period, the Secretary publishes a notice of that action in the **Federal Register** and makes available to the public, upon request, the Secretary's determination.

(Authority: 20 U.S.C. 1099b)

Subpart C—Criteria for Secretarial Recognition

§ 602.20 Geographic scope of accrediting activities.

To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the geographical scope of its accrediting activities covers—

(a) A State, if the agency is a component of a State government;

(b) A region of the United States that includes at least three States that are contiguous or in close geographical proximity to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.21 Administrative and fiscal responsibility.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if it has, and will likely continue to have—

(1) Adequate administrative staff to—

(i) Carry out its accrediting responsibilities effectively; and

(ii) Manage its finances effectively;

(2) Competent and knowledgeable individuals, qualified by experience and training, responsible for on-site evaluation, policy-making, and decision-making regarding accreditation and preaccreditation status;

(3) Representation on its evaluation, policy, and decision-making bodies of—

(i) For an institutional accrediting agency, both academic and administrative personnel; and

(ii) For a programmatic accrediting agency, both educators and practitioners;

(4) Representation of the public on all decision-making bodies;

(5) Clear and effective controls against conflicts of interest or the appearance of conflicts of interest by the agency's board members, commissioners, evaluation team members, consultants, administrative staff, and other agency representatives;

(6) Adequate financial resources to carry out its accrediting responsibilities, taking into account the funds required to conduct the range of accrediting activities specified in the requested scope of recognition and the income necessary to meet the anticipated costs of its activities in the future; and

(7) Complete and accurate records of—

(i) Its last two full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, institution or program responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and the institution's or program's most recent self-study report; and

(ii) All preaccreditation and accreditation decisions, including all adverse actions.

(Authority: 20 U.S.C. 1099b)

§ 602.22 Accreditation experience.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has adequate experience in accrediting institutions, programs, or both.

(b) The Secretary considers that an accrediting agency satisfies the requirements of paragraph (a) of this section if it has—

(1) Granted accreditation or preaccreditation status to institutions or programs in the geographical area for which it seeks recognition;

(2) Conducted accreditation activities covering the range of the specific degrees, certificates, and programs for which it seeks recognition, including—

(i) Granting accreditation or preaccreditation status; and

(ii) Providing technical assistance related to accreditation to institutions, programs, or both; and

(3) Established policies, evaluative criteria, and procedures, and made evaluative decisions, that are accepted throughout the United States by—

(i) Educators and educational institutions; and

(ii) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

§ 602.23 Application of standards.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it consistently applies and enforces written standards that ensure that the education or training offered by an institution or program is of sufficient quality to achieve, for the duration of any accreditation period granted by the agency, the stated objective for which it is offered.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if—

(1) The agency's written standards and procedures for accreditation and preaccreditation, if that latter status is offered, comply with the requirements of this part;

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards, with a limit on preaccreditation status of no more than five years for any institution or program;

(3) The agency's organizations, functions, and procedures include effective controls against the inconsistent application of its criteria and standards;

(4) The agency bases its decisions regarding accreditation or preaccreditation on its published criteria; and

(5) The agency maintains a systematic program of review designed to ensure that its criteria and standards are valid and reliable indicators of the quality of the education or training provided by the institutions or programs it accredits and are relevant to the education or training needs of affected students.

(6) The agency demonstrates to the Secretary that, as a result of its program of review under paragraph (b)(5) of this section, each of its standards provides—

(i) A valid measure of the aspects of educational quality it is intended to measure; and

(ii) A consistent basis for determining the educational quality of different institutions and programs.

(Authority: 20 U.S.C. 1099b)

§ 602.24 Accreditation processes.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has effective mechanisms for evaluating compliance with its standards and that those mechanisms cover the full range of an institution's or program's offerings, including those offerings conducted at branch campuses and additional locations.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if—

(1) In determining whether to grant initial or renewed accreditation, the accrediting agency evaluates whether an institution or program—

(i) Maintains clearly specified educational objectives consistent with its mission and appropriate in light of the degrees or certificates it awards;

(ii) Is successful in achieving its stated objectives;

(iii) Maintains degree and certificate requirements that at least conform to commonly accepted standards; and

(iv) Complies with the agency's criteria;

(2) In reaching its determination to grant initial or renewed accreditation, the accrediting agency—

(i) Requires an in-depth self-study by each institution or program, in accordance with guidance provided by the agency, that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(ii) Conducts at least one on-site review of the institution or program at which the agency obtains sufficient information to enable it to determine if the institution or program complies with the agency's criteria;

(iii) Conducts its own analyses and evaluations of the self-study and supporting documentation furnished by the institution or program, and any other appropriate information from other sources, to determine whether the institution or program complies with the agency's standards; and

(iv) Provides to the institution or program a detailed written report on its review assessing—

(A) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(B) The institution's or program's performance with respect to student achievement;

(3) In addition to the on-site visit described in paragraph (b)(2)(ii) of this section, an institutional accrediting agency whose accreditation enables the institutions it accredits to seek eligibility to participate in Title IV, HEA programs conducts—during the interval between the agency's award of accreditation or preaccreditation to the institution or program and the expiration of the accreditation or preaccreditation period—at least one unannounced on-site inspection at each institution that provides vocational education or training for the purpose of determining whether the institution has the personnel, facilities, and resources it claimed to have either during its previous on-site review or in subsequent reports to the accrediting agency;

(4) The accrediting agency—

(i) Monitors institutions or programs throughout the accreditation or preaccreditation period to ensure continuing compliance with the agency's standards or criteria; and

(ii) Conducts special evaluations, site visits, or both, as necessary; and

(5) The accrediting agency regularly reevaluates institutions or programs that have been granted accreditation or preaccreditation.

(Authority: 20 U.S.C. 1099b)

§ 602.25 Substantive change.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an institutional accrediting agency must demonstrate to the Secretary that it maintains adequate substantive change policies that ensure that any substantive change to the educational mission or program(s) of an institution after the agency has granted accreditation or preaccreditation to the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if—

(1) The agency requires prior approval of the substantive change by the agency before the change is included in the agency's previous grant of accreditation or preaccreditation to the institution; and

(2) The agency's definition of substantive change includes, but is not limited to, the following types of change:

(i) Any change in the established mission or objectives of the institution;

(ii) Any change in the legal status or form of control of the institution;

(iii) The addition of courses or programs that represent a significant departure, in terms of either in the content or method of delivery, from

those that were offered when the agency most recently evaluated the institution;

(iv) The addition of courses or programs at a degree or credential level above that included in the institution's current accreditation or preaccreditation;

(v) A change from clock hours to credit hours or *vice versa*; and

(vi) A substantial increase in—

(A) The number of clock or credit hours awarded for successful completion of a program; or

(B) The length of a program.

(c) The agency has discretion to determine the procedures it will use to grant prior approval of the substantive change, which may, but need not, require an on-site evaluation before approval is granted.

(Authority: 20 U.S.C. 1099b)

§ 602.26 Required accreditation standards.

(a)(1) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that its accreditation or preaccreditation standards, or both, are sufficiently rigorous to ensure that the agency is a reliable authority as to the quality of the education or training provided by the institutions or programs it accredits.

(2) For a programmatic accrediting agency that does not serve as an institutional accrediting agency for any of the programs it accredits, the standards must address the areas contained in paragraph (b) of this section in terms of the type and level of the program rather than in terms of the institution.

(3) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions accredited by an institutional accrediting agency recognized by the Secretary, the accrediting agency is not required to have the standards described in paragraphs (b)(7), (b)(8), (b)(10), and (b)(12) of this section.

(b) In order to assure that an accrediting agency is a reliable authority as to the quality of the education or training provided by an institution or program it accredits, the agency must have standards that effectively address the quality of an institution or program in the following areas:

(1) Curricula.

(2) Faculty.

(3) Facilities, equipment, and supplies.

(4) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(5) Student support services.

(6) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(7) Program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered.

(8) Measures of program length in clock hours or credit hours.

(9) Success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

(10) Default rates in the student loan programs under Title IV of the Act, based on the most recent data provided by the Secretary.

(11) Record of student complaints received by, or available to, the agency.

(12) Compliance with the institution's program responsibilities under Title IV of the Act, including any results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency.

(c)(1) An accrediting agency shall take appropriate action if its review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard.

(2) If the agency believes that the institution or program is not in compliance with the standards, the agency shall—

(i) Take prompt adverse action against the institution or program; or

(ii) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time frame specified by the agency.

(3) The accrediting agency has sole discretion to determine the course of action it chooses under paragraph (c)(2) of this section and, if it selects the option specified in paragraph (c)(2)(ii) of this section, the time frame for the institution or program to bring itself into compliance with agency standards. However, except as indicated in paragraph (c)(4) of this section, the specified period may not exceed—

(i) Twelve months, if the program is less than one year in length;

(ii) Eighteen months, if the program is at least one year, but less than two years, in length; or

(iii) Two years, if the program is at least two years in length.

(4) If the institution or program does not bring itself into compliance within the specified period, the agency must take adverse action unless the agency extends the period for achieving compliance for good cause.

(d) An accrediting agency shall have a reasonable basis for determining that the information it relies on for making the assessments described in paragraphs (b) and (c) of this section is accurate.

(e) An accrediting agency that has established and applies the standards in paragraph (b) of this section may establish any additional accreditation standards as it deems appropriate.

(Authority: 20 U.S.C. 1091, 1099b)

§ 602.27 Additional required operating procedures.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it satisfies the procedural requirements contained in other provisions of this part and the additional requirements contained in paragraphs (b) through (h) of this section.

(b) If the accrediting agency accredits institutions and that accreditation enables those institutions to seek eligibility to participate in Title IV, HEA programs—

(1) The agency requires the institution to—

(i) Notify the agency if the institution plans to establish a branch campus; and

(ii) Submit a business plan described in paragraph (b)(2) of this section for the branch campus;

(2) The business plan that an institution submits under paragraph (b)(1)(ii) of this section must contain a description of—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus;

(3) The agency extends accreditation to the branch campus only after evaluating the business plan and taking other necessary actions to permit the agency to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to satisfy the accrediting agency's standards for accreditation;

(4) The agency undertakes a site visit of the branch campus as soon as practicable, but no later than six months after the establishment of that branch campus;

(5) The agency undertakes a site visit of an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership; and

(6) The agency requires any institution it accredits that enters into a teach-out agreement with another

institution to submit that teach-out agreement to the agency for approval and approves the teach-out agreement if the agreement—

(i) Is consistent with applicable standards and regulations; and

(ii) Provides for the equitable treatment of students by ensuring that—

(A) Students are provided, without additional charge, all of the instruction promised by the closed institution prior to its closure but not provided to the students because of the closure; and

(B) The teach-out institution is geographically proximate to the closed institution and can demonstrate compatibility of its program structure and scheduling to that of the closed institution.

(c) The accrediting agency maintains and makes publicly available written materials describing—

(1) Each type of accreditation and preaccreditation granted by the agency;

(2) Its procedures for applying for accreditation or preaccreditation;

(3) The criteria and procedures used by the agency for determining whether to grant, reaffirm, reinstate, deny, restrict, revoke, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies as well as the agency's principal administrative staff; and

(5) The institutions or programs that the agency currently accredits or preaccredits and the date when the agency will review or reconsider the accreditation or preaccreditation of each institution or program.

(d) In accordance with agency policy, the accrediting agency publishes the year when an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation and provides an opportunity for third-party comment, either in writing or at a public hearing, at the agency's discretion, concerning the institution's or program's qualifications for accreditation or preaccreditation.

(e) The accrediting agency provides advance public notice of proposed new or revised criteria, giving interested parties adequate opportunity to comment on these proposals prior to their adoption.

(f) The accrediting agency—

(1) Reviews any complaint it receives against an accredited institution or program, or the agency itself, that is related to the agency's standards, criteria, or procedures; and

(2) Resolves the complaint in a timely, fair, and equitable manner.

(g) The accrediting agency ensures that, if an institution or program elects to make a public disclosure of its accreditation or preaccreditation status granted by the agency, the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the accrediting agency.

(h) The accrediting agency provides for the public correction of incorrect or misleading information released by an accredited or preaccredited institution or program about—

(1) The accreditation status of the institution or program;

(2) The contents of reports of site team visitors; and

(3) The agency's accrediting actions with respect to the institution or program.

(Authority: 20 U.S.C. 1099b)

§ 602.28 Due process for institutions and programs.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the procedures it uses throughout the accrediting process satisfy due process requirements.

(b) The Secretary considers that an accrediting agency's procedures satisfy due process requirements if—

(1) The agency sets forth in writing its procedures governing its accreditation or preaccreditation processes;

(2) The agency's procedures afford an institution or program a reasonable period of time to comply with agency requests for information and documents;

(3) The agency notifies the institution or program in writing of any adverse accrediting action;

(4) The agency's notice details the basis for any adverse accrediting action;

(5) The agency permits the institution or program the opportunity to appeal an adverse accrediting action, and the right to representation by counsel during an appeal, except that the agency, at its sole discretion, may limit the appeal to a written appeal; and

(6) The agency notifies the appellant in writing of the result of the appeal and the basis for that result.

(Authority: 20 U.S.C. 1099b)

§ 602.29 Notification of accrediting agency decisions.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, except as provided in paragraph (b) of this section, an accrediting agency must demonstrate to the Secretary that its written policies, procedures, and practices require it to notify the Secretary, the appropriate State postsecondary review entity, the appropriate accrediting agencies, and the public of the following types of decisions, no later than 30 days after a decision is made:

(1) A decision by the agency to award initial accreditation or preaccreditation to an institution or program.

(2) A final decision by the agency to—

(i) Deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program; or

(ii) Take other adverse action against an institution or program.

(3) A decision by the agency to place an institution or program on probation.

(4) A decision by an accredited institution or program to withdraw voluntarily from accreditation or formal preaccreditation status.

(5) A decision by an accredited institution or program to let its accreditation or preaccreditation lapse.

(b) If the agency's final decision is to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program or to take other adverse action against an institution or program, the agency must notify the Secretary of that decision at the same time it notifies the institution or program.

(c) No later than 60 days after a final decision, the accrediting agency makes available to the Secretary, the appropriate State postsecondary review entity, and the public upon request, a brief statement summarizing the reasons for the agency's determination to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program, and the comments, if any, that the affected institution or program may wish to make with regard to that decision.

(d)(1) For purposes of the decisions described in paragraph (a)(4) of this section, the date of the decision is the date on which the accrediting agency receives notification by the institution or program that it is voluntarily withdrawing from accreditation or preaccreditation.

(2) For purposes of the decisions described in paragraph (a)(5) of this section, the date of the decision is the date on which accreditation or preaccreditation lapses.

(Authority: 20 U.S.C. 1099b)

§ 602.30 Regard for decisions of States and other accrediting agencies.

(a) To be listed by the Secretary as a nationally recognized accrediting

agency, an accrediting agency must demonstrate to the Secretary that—

(1) If the accrediting agency accredits institutions—

(i) The agency accredits only those institutions that are legally authorized under applicable State law to provide a program of education beyond the secondary level;

(ii) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation of an institution during a period in which the institution—

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation;

(B) Is the subject of an interim action by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

(C) Has been notified of a threatened loss of accreditation, and the due process procedures required by the action have not been completed; or

(D) Has been notified of a threatened suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(iii) In considering whether to grant initial accreditation or preaccreditation to an institution, the agency takes into account actions by—

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide postsecondary education;

(iv) If the agency grants accreditation or preaccreditation to an institution notwithstanding the actions described in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the agency provides the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(v) If a recognized institutional accrediting agency takes an adverse action with respect to a dually-accredited institution or places the institution on public probationary status, or if a recognized programmatic accrediting agency takes an adverse action for reasons associated with the overall institution rather than the specific program against a program offered by an institution or places the program on public probation, the agency promptly reviews its accreditation or preaccreditation of the institution to determine if it should also take adverse action against the institution.

(2) If the accrediting agency accredits programs—

(i) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation status of a program during any period in which the institution offering the program—

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation;

(B) Is the subject of an interim action by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

(C) Has been notified of a threatened loss of accreditation, and the due process procedures required by the action have not been completed;

(D) Has been notified of a threatened suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(ii) In considering whether to grant initial accreditation or preaccreditation to a program, the agency takes into account actions by—

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution offering the program, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide postsecondary education;

(iii) If the agency grants accreditation or preaccreditation to a program notwithstanding the actions described in paragraph (a)(2)(ii) of this section, the agency provides to the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(iv) If a recognized institutional accrediting agency takes adverse action with respect to the institution offering the program or places the institution on public probationary status, the agency promptly reviews its accreditation or preaccreditation of the program to determine if it should take adverse action against the program.

(3) The agency routinely shares with other appropriate recognized accrediting agencies and State agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(b) An accrediting agency is subject to the requirements contained in paragraph (a) of this section if the accrediting agency knew, or should have known, of the actions being taken by another recognized accrediting agency or State agency.

(Authority: 20 U.S.C. 1099b)

Appendix

Analysis of Comments and Changes

(**Note:** This appendix will not be codified in the Code of Federal Regulations.)

An analysis of the comments and the changes to the regulations follows. General comments that refer to broad issues rather than a specific section or sections of the proposed regulations are discussed first, followed by a discussion of other issues in the order in which they appeared in the NPRM.

It should be noted that not all comments are discussed in this appendix. There are several reasons for this. First, many of the concerns expressed by commenters were directed to the statute, not the proposed regulations. In some instances, those comments are mentioned in the discussion that follows because of the importance of the issues that were raised. In most instances, however, they are not mentioned because the Secretary is not legally authorized to make the changes suggested by commenters. Second, many commenters made excellent suggestions for editorial and technical changes, as well as other minor changes, that, in the Secretary's opinion, strengthened the regulations; the Secretary has merely incorporated these suggestions without comment. For example, in § 602.11(b)(1)(ii) the Secretary received a comment that it was better to include third-party information received by the Secretary, in addition to that solicited by the Secretary. Third, some comments appeared to be based on misunderstandings of what was actually in the NPRM. For example, a few commenters expressed concern about the absence of a particular provision

that was, in fact, included in the NPRM. Fourth, several comments appeared to be directed toward specific practices of currently recognized accrediting agencies that commenters believed violated either the proposed regulations or what the commenters believed to be established accrediting practices. In general, these comments are not discussed here, but Department staff will investigate these complaints as part of the Department's ongoing monitoring of agencies.

General Comments

The Secretary received numerous comments about the overall impact of the proposed regulations. In general, commenters opposed to the proposed regulations believed that the NPRM did not achieve the coordinated balance of responsibilities among the triad members that it sought to achieve, and that it provided for extensive and duplicative data collection and reporting requirements that created a costly and unnecessary burden on the entire higher education community. Further, they believed that the regulations did not regulate "narrowly to the law," as they purported to do. In general, these commenters suggested that the Secretary should review each requirement in the proposed regulations to determine if it was required by the statute and should further ensure that all requirements that meet this test and are included in the final regulations are implemented in the most reasonable and cost effective manner. This, they believed, would ensure the Department's compliance with Executive Order 12866.

The more specific concerns of commenters opposed to the proposed regulations may be summarized as follows:

(1) The proposed regulations are overly prescriptive and excessive in detail and either exceed the statutory authority of the Secretary or significantly expand the statute beyond Congressional intent.

(2) The proposed regulations will force institutions to engage in excessive and duplicative information gathering and reporting, at considerable cost, with no net increase in the quantity or quality of information available to the public, and will result in the diversion of institutions' already scarce resources away from their primary mission of providing a quality education.

(3) The proposed regulations compromise the integrity of accreditation as a voluntary system of peer review and institutional improvement; they dilute the focus and purpose of accreditation by requiring accrediting agencies to assume responsibilities that are more appropriate to the State or Federal government.

(4) The proposed regulations will create undue, duplicative, and costly burdens on accrediting agencies for which they will receive no reimbursement from the Federal government.

(5) The proposed regulations give the Secretary approval authority over accrediting agencies' standards, which commenters believe is expressly forbidden by the statute.

(6) The proposed regulations threaten the diversity of American higher education and fail to focus oversight properly on vocational institutions.

In addition to receiving comments in opposition to the proposed regulations, the Secretary received many comments supportive of the NPRM. Some commenters, for example, believed the accreditation process needed a major overhaul, that accrediting agencies were far too secretive in their actions, and there was genuine need for substantially increased accountability of accrediting agencies to students and the general public.

Finally, the Secretary received suggestions from several commenters that the Department should strongly encourage all triad members to work together and adopt the same or similar language for the various standards, should collect the necessary data through a common source such as readily available public information or IPEDS, and should use common methodologies for various calculations such as completion or withdrawal rates.

Discussion: As suggested by several commenters, the Secretary has carefully reviewed each requirement in the proposed regulations in light of statutory intent. The Secretary has also carefully considered both the burden of the proposed regulations on institutions and accrediting agencies, in terms of cost, duplication of effort, and the added recordkeeping and reporting requirements. Similarly, the Secretary has considered the benefits of the proposed regulations, not just to institutions and accrediting agencies but to students and the general public as well. A particular concern of the Secretary has been how to ensure that the regulations hold the three members of the triad accountable for the manner in which they fulfill their responsibilities under the HEA yet still provide each member of the triad the flexibility to determine the appropriate means to carry out those responsibilities.

In general, the Secretary has responded to the concerns of commenters by eliminating much of what was perceived as excessive detail in the NPRM, thus providing accrediting agencies more flexibility to meet a particular requirement in the manner that best suits their needs and the needs and individual circumstances of the institutions or programs they accredit. At the same time, however, the Secretary has increased the accountability of agencies, as, for example, by strengthening the requirements that accrediting agencies must have effective standards and must monitor institutions or programs carefully for continued compliance with those standards. The final regulations make it quite clear that the Secretary regards accrediting agencies as having primary responsibility for educational quality, but they also make it clear that the Secretary holds accrediting agencies accountable for the quality of the institutions or programs they accredit.

The Secretary has also responded to the concerns of commenters by eliminating a number of the specific reporting and recordkeeping requirements the proposed regulations would have imposed on both accrediting agencies and institutions and by allowing agencies and institutions to work together to determine realistic requirements for reporting and recordkeeping. At the same time, the Secretary holds agencies accountable for the effectiveness of those requirements.

The Secretary believes this overall approach retains the principal strength of the current accrediting system—a system of peer review that focuses on the unique mission of each institution or program and that fosters educational improvement consistent with that mission—but effectively addresses the concerns with the current system that Congress raised when it created the Program Integrity Triad to strengthen institutional oversight.

To illustrate the effect of this overall strategy, the Secretary offers as an example the changes to § 602.26, Required accreditation standards. This section now contains only the statutory language for the 12 required standards. In this "minimalist" approach, the regulations achieve the objectives of Executive Order 12866. By no longer requiring institutions to provide annual audits to accrediting agencies, the regulations reduce the paperwork burden on both accrediting agencies and institutions at the same time they remove a major source of costly duplication of effort by accrediting agencies and the Department. By

allowing agencies flexibility in establishing standards for the 12 required areas, the regulations minimize any added costs to institutions necessitated by the new requirements. Accrediting agencies are no longer required to establish and maintain costly and duplicative systems for collecting and maintaining specific information about the institutions or programs they accredit. Now agencies may tailor their systems to the mission, needs, and circumstances of those institutions or programs and the students they serve. The overall effect of the changes to this one section of the regulations is to reduce cost, reduce burden, reduce paperwork, reduce duplication of effort, and free accrediting agencies and institutions to focus on the quality of education in all its manifestations.

The Secretary acknowledges that there is a potential risk with this strategy, however. By giving accrediting agencies maximum flexibility in these regulations, by giving SPREs corresponding flexibility in the regulations for the State Postsecondary Review Program, and by retaining authority for the Secretary to set specific requirements implementing the certification process, the danger exists that institutions will be burdened with reporting requirements that are similar, but not identical, thus increasing not only the reporting requirement but the recordkeeping requirement and cost as well. For this reason, the Secretary strongly urges a coordinated approach to any reporting requirement that may be imposed on institutions by the regulations implementing the Program Integrity Triad. Specifically with respect to accrediting agencies, the Secretary urges agencies to impose reporting requirements on the institutions or programs they accredit only after they carefully examine any publicly available information related to those requirements, any similar reporting requirements imposed on institutions by either the Department or the State Postsecondary Review Entities under the State Postsecondary Review Program, and any methodologies currently used, or mandated for use, by institutions in calculating the required information. The Secretary hopes that by bringing this potential risk of increased burden on institutions to the attention of the entire higher education community—without specifically addressing it in regulation—the community can work together to prevent undue burden at the same time it ensures proper accountability. The Secretary expects to take a leadership role in implementing a coordinated strategy to manage the triad, with the goal of maximizing effectiveness while minimizing burden, duplication, and inconsistencies among accrediting agencies, SPREs, and the Department.

As several commenters raised the issue of Secretarial approval authority over an accrediting agency's standards, the Secretary believes it is necessary to respond. It is the Secretary's belief that section 496(a) of the HEA statute gives the Secretary explicit approval authority over an agency's standards in the context of the Secretary's overall responsibility for determining whether the agency is a reliable authority as to the quality of education or training offered by the institutions and programs it accredits.

Finally, with regard to the issue of whether the regulations properly focus on vocational institutions, the Secretary wishes to note that Congress found abuses in all sectors of higher education, not just the vocational sector. For this reason, the regulations apply to all institutions, with the exception of the requirement of unannounced inspections to institutions that provide vocational education.

Changes: The specific changes to the regulations are discussed below.

Subpart A—General Provisions

Section 602.1 Purpose.

Comments: The Secretary received several comments about the requirement that Secretarial recognition is now limited to those accrediting agencies that accredit institutions of higher education or higher education programs for the purpose of enabling those institutions or programs to establish eligibility to participate in programs administered either by the Secretary or by other Federal agencies. In general, commenters expressed concern that the requirement would cause many of the currently recognized specialized or programmatic accrediting agencies to lose recognition. Commenters believed that failure to include these agencies on the list of nationally recognized accrediting agencies was counter to the purpose of the list, which they believed was to inform the public of those accrediting agencies that the Secretary determined to be reliable authorities as to the quality of education or training provided by the institutions or programs they accredit. Commenters also believed that, in general, institutional accrediting agencies did not examine in depth the individual programs offered by an institution and that the only assurance of the quality of these programs was provided by the programmatic agencies that accredited them. It was suggested by some commenters that the Federal purpose would be better served if the specialized or programmatic accrediting agencies and the institutional accrediting agencies worked together to assess the quality of education.

One commenter urged a broad interpretation of the phrase "for other Federal purposes" in section 496(a) of HEA to include a whole range of benefits that accrue to the Federal Government by virtue of the Secretary's recognition of an accrediting agency, including the use of an individual's graduation from a program accredited by a nationally recognized accrediting agency for entry-level qualifications for Federal employment.

Some commenters expressed concern that the language in § 602.1(b)(1) and (2) was misleading because the purpose of accreditation was not to enable institutions or programs to establish eligibility to participate in Federal programs. A number of these commenters provided specific suggestions for amending the language to address this concern.

Finally, the Secretary received a suggestion to reorganize this paragraph so that it, rather than § 602.3, provided a summary of the recognition requirements an accrediting agency must meet in order to be recognized by the Secretary.

Discussion: The Secretary acknowledges that the many fine programmatic accrediting agencies currently on the list of nationally recognized accrediting agencies provide an excellent measure of quality assurance in their respective fields of specialization. However, section 496(m) of the HEA makes it clear that the Secretary may recognize only those agencies that accredit institutions of higher education or higher education programs for the purpose of enabling those institutions or programs to establish eligibility to participate in programs administered either by the Secretary or by other Federal agencies.

The Secretary does not believe that the broader interpretation of the phrase "for other Federal purposes" in section 496(a) suggested by the one commenter is legally supportable because section 496(m) clearly defines the purpose an agency's accreditation must serve it if is to be recognized by the Secretary, namely the agency's accreditation must enable the institutions or programs it accredits to establish eligibility to participate in Federal programs.

The Secretary understands that the purpose of accreditation is not to enable institutions or programs to establish eligibility to participate in Federal

programs but rather to publicly recognize those institutions or programs that meet an accrediting agency's standards for educational quality. The Secretary appreciates the various suggestions for clarifying this in the regulations and has changed these regulations accordingly.

Finally, the Secretary appreciates the suggestion for reorganizing this paragraph to summarize the recognition requirements and believes it is helpful.

Change: The language in § 602.1(b) has been modified to clarify that an agency's accreditation of an institution or program must be a required element in enabling the institution or program to establish eligibility to participate in Federal programs. The section has been reorganized to clarify the recognition requirements accrediting agencies must meet if they wish to be recognized by the Secretary.

Section 602.2 Definitions

Accreditation

Comments: Several commenters noted that the word "qualifications" was either misleading or redundant and that the word "policies" or "procedural requirements" would be more appropriate.

Discussion: The word "qualifications" in the definition, which is the same definition as that used in previous regulations, does not refer to either policies or procedural requirements. Rather, it refers in general to the various requirements for accreditation that an accrediting agency might have. For example, an institution located in New York might meet all of the accreditation standards of the New England Association of Schools and Colleges (NEASC), but it is ineligible for accreditation by NEASC because it is not located in New England.

Change: The term "qualifications" has been replaced by the term "requirements."

Adverse Accrediting Action

Comments: One commenter felt the definition could be strengthened to ensure that agencies had a variety of useful sanctions, the application of which were not automatically appealable under § 602.28(a)(5). Another felt that the term should be uniformly defined by all accrediting agencies to reduce the possibility of misunderstanding arising from the use of different definitions.

Discussion: For purposes of these regulations, the Secretary has defined the term "adverse accrediting action" to include, as a minimum, those actions initiated by an accrediting agency that result in an institution or program losing its accreditation. However, the Secretary believes accrediting agencies should be free both to define other actions they consider to be adverse accrediting actions and to establish other sanctions that are not automatically appealable by the institution or program.

Change: None.

Branch Campus

Comments: In general, commenters expressed concern that the definition of "branch campus" was inconsistent with its use in § 602.27 and that there was no statutory basis for including "additional locations" in the requirement for special actions by accrediting agencies when an institution opened a branch campus.

Discussion: Under 498(j) of the HEA, the Secretary is charged with defining the term "branch campus" for purposes of Title IV of the HEA. Generally, when the Secretary defines a term, the term is defined in the same manner for any and every Title IV, HEA purpose. Accordingly, the Secretary adopted the definition of the term "branch campus" that was proposed in the Institutional Eligibility regulations, 34 CFR Part 600, in the proposed accreditation regulations. However, the Secretary realized that particular definition was too narrow to carry out the purposes of sections 496(c) (2) and (3) of the HEA, under which an institution that establishes a branch campus must file a business plan with its accrediting agency and the agency must conduct a site visit at the branch campus within six months of its establishment. Therefore, in § 602.27 of the NPRM, the Secretary imposed the requirements relating to branch campus on "additional locations" as well.

For program and administrative reasons, the Secretary has determined to keep the narrow definition of the term "branch campus" in the Institutional Eligibility regulations. However, the Secretary has adopted a different definition of "branch campus" for these regulations because that different definition is more in keeping with the statutory requirements of section 496(c). The Secretary believes this different definition is preferable because it provides assurances to students who enroll at any location of an institution that offers a substantial portion of an educational program that the location has the resources to operate, and is operating, in compliance with accrediting agency standards.

Change: The definition has been revised to include locations that meet the definition of this term in 34 CFR 600.2, which is basically the same definition as in the NPRM, and any other locations at which an institution offers at least 50 percent of an educational program. Section 602.27 has been revised to eliminate any reference to "additional location."

Prebaccalaureate Vocational Education

Comments: The Secretary received numerous comments on the definition of this term and the corresponding term, "vocational education." Many commenters believed there was no statutory basis for the distinctions in the NPRM and that the use of the term improperly targeted a particular segment of higher education for burdensome and unwarranted sanctions. Among commenters who expressed an opinion on the various definitions under consideration, responses were divided. Some preferred a definition that excluded any type of vocational education that led to a degree, while others felt the definition should include all prebaccalaureate vocational education regardless of the credential awarded.

Discussion: See discussion below under "vocational education."

Change: The term "prebaccalaureate vocational education" has been deleted from the regulations.

Representative of the Public

Comments: The Secretary received two suggestions for changing this definition. One was to allow members of the governing board of affiliated nonprofit institutions to represent the public. The other was to exclude close relatives of students or employees at affiliated institutions.

Discussion: The Secretary believes that members of the governing board of affiliated non-profit institutions can make valuable contributions to an accrediting agency but should not do so in the capacity of a representative of the public. The Secretary also believes the exclusion of spouses, parents, children, and siblings of employees of affiliated institutions is appropriate and that the exclusion ought to extend to close relatives of other individuals listed in the definition. On the other hand, the Secretary believes students, who are the consumers in this instance, and their families can serve a useful role as representatives of the public.

Change: The definition has been revised to exclude close relatives of individuals listed in the definition from serving as representatives of the public.

Teach-out Agreement

Comments: The Secretary received a suggestion to include in the definition specific criteria for what constitutes the

"equitable treatment of students." The Secretary also received a suggestion to delete the definition because the Department's previous teach-out regulations, issued January 1998, were rescinded.

Discussion: The requirement that accrediting agencies have standards for teach-out agreements is specified in section 496(b)(4) of the HEA and is independent of any Department regulation that may or may not be in effect regarding teach-out agreements. The Secretary believes the inclusion of provisions for what constitutes equitable treatment of students under a teach-out agreement is a useful addition to the regulations but believes these provisions should be included in § 602.27(b)(6), where the requirement for teach-out agreements is described, rather than in the definition section.

Change: None. However, the specific criteria for what constitutes equitable treatment of students have been added to § 602.27(b)(6).

Vocational Education

Comments: The Secretary received numerous comments on the definition of this term and the corresponding term, "prebaccalaureate vocational education." Many commenters preferred a broad definition that treated all institutions offering any type of vocational education the same way. Others preferred a definition that excluded programs leading to any type of degree. Some commenters suggested a definition similar to that in the Carl D. Perkins Vocational and Applied Technology Education Act. Others suggested different approaches to the issue, including the use of the term "nonacademic education program," which they defined to be the opposite of an academic education program, as they believed that term was defined in the Department's clock hour/credit hour regulations. Still others preferred a definition that restricted the term to institutions whose predominant offerings were vocational, with "predominant" defined to mean more than 75 percent of an institution's offerings. Almost all commenters preferred that the same definition be used in both the accreditation and SPRE regulations.

Discussion: The Secretary has carefully considered all comments received on this issue, as well as those on the broader issue of the burden these regulations would impose on institutions and accrediting agencies. While the Secretary agrees that it would be best if these regulations and those for the State Postsecondary Review Program used both the same term and the same definition of that term, the Secretary is aware that the statute uses the term "vocational education" for accreditation and "vocational program" for the State Postsecondary Review Program. Consequently, the Secretary believes the appropriate term for the accreditation regulations is "vocational education" and for the SPRE regulations "vocational program." However, despite the difference in the specific term used, the Secretary believes that the definition of both terms should be the same.

The Secretary has examined all of the proposed definitions for the accreditation and SPRE regulations and believes that the IPEDS glossary definition of an "occupationally specific program" most closely meets the needs of both regulations. The Secretary has modified this definition slightly, however, to meet the specific needs of accreditation and the State Postsecondary Review Program. Thus, in the accreditation regulations, the term "vocational education" is defined to be an instructional program, below the bachelor's level, designed to prepare individuals with the skills and training required in a specific trade, occupation, or profession related to the instructional program. The identical definition is used in the SPRE regulations for a "vocational program." While the definition differs slightly from the exact wording in the IPEDS definition, the Secretary wishes to make clear that the list of occupationally specific programs provided by IPEDS defines the instructional programs that, if offered by an institution, cause the institution to be subject to unannounced inspections by the institution's accrediting agency, as specified in § 602.24.

Change: The term "vocational education" has been redefined as indicated above under the Discussion section.

Section 602.3 Organization and Membership

Comments: A few commenters expressed concern about the requirement in section 496(a) of the HEA that accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA must be administratively and financially separate from and independent of any related, associated, or affiliated trade association or membership organization. These commenters believed that this requirement would force many agencies to undergo a major restructuring simply to come into technical compliance with this provision despite the fact that there was no evidence their present structure in any way compromised the integrity of their accrediting decisions.

The Secretary also received some comments about the provisions for a waiver of the "separate and independent" requirements. Most of these were directed to specific circumstances that exist, or might exist, in the case of a particular accrediting agency seeking a waiver. The Secretary also received a suggestion that accrediting agencies should have to seek the waiver each time they applied for recognition, or renewal of recognition, by the Secretary.

Discussion: The general concern about the new organization and membership requirements is directed to the law, not the regulations. As the language in § 602.3 merely restates the requirements of the law, it cannot be changed.

With regard to the waiver of the "separate and independent" requirements, the Secretary believes the specific circumstances described by various commenters about a particular accrediting agency should be addressed in the context of that agency's application for the waiver, not through regulation. The Secretary accepts the suggestion to stipulate in regulation that an agency must seek a waiver each time it applies for recognition or renewal of recognition.

Change: A requirement has been added that accrediting agencies must seek a waiver of the "separate and independent" requirement each time they apply for recognition or renewal of recognition.

Section 602.4 Submission of Information to the Secretary by Recognized Accrediting Agencies

Comments: The Secretary received numerous comments that the proposed requirement in § 602.4(e)—that an accrediting agency had to submit to the Secretary, upon request, information to assist the Secretary in resolving problems with any institution or program accredited by the agency—exceeded the statute and failed to distinguish adequately between public and private information maintained by accrediting agencies. Commenters generally believed that this requirement put accrediting agencies in the position of being required to do the Secretary's work and threatened to compromise the inherent value of the peer review system on which accreditation is based. Some of these commenters believed that § 602.4(e) should be deleted in its entirety, while others suggested that the information to be provided by accrediting agencies should be restricted either to the accreditation status of an institution or program or to the

minimum information needed to fulfill the intent of the law.

Not all commenters were opposed to § 602.4(e), however. Some supported it as written. Some stated their opinion that the less confidential information accrediting agencies kept the better. Several of these commenters suggested that a protocol be developed for the sharing of information and that there should be a single office within the Department that served as contact with accrediting agencies for the purpose of information sharing. One commenter suggested that accrediting agencies be given time to negotiate a new understanding of the information sharing concept with institutions because, as important as the concept was, it was generally in conflict with most agencies' policies on confidentiality. One commenter, while expressing general support for information sharing, cautioned against requiring information to be shared before it was confirmed in fact, the institution had received due process, and any applicable appeals were complete. Many commenters suggested that a possible solution that would allow the Secretary access to the information the Secretary needed without placing agencies in the position of doing the Secretary's work was the use of an administrative subpoena by the Department.

Of general concern to all commenters on the issue of information sharing was the kind of information shared by an accrediting agency about an accredited institution or program that would be obtainable by anyone under the Freedom of Information Act (FOIA).

With regard to the comment in the NPRM that the Secretary was considering adding to this section a requirement that an accrediting agency must refer to the Department's Office of Inspector General any fraudulent activities it discovers on the part of an institution or program it accredits, provided that institution or program participates in Title IV, HEA programs, the Secretary received strong support for the general concept but some concern about agencies' liabilities should the institution or program be subsequently found not to have engaged in fraud. Commenters also urged the Secretary to substitute for the term "fraud," which has a very precise legal definition, something more general like "substantial wrongdoing" or "serious abuse."

Finally, several commenters noted that there was no provision in the proposed regulations that paralleled the proposed requirement in 34 CFR part 667 that the Secretary notify the State postsecondary review entity of Federal actions against an institution. Commenters also suggested that the State postsecondary review entity should be required to notify an accrediting agency of the outcome of any review of an institution accredited by the agency that it makes under the State Postsecondary Review Program.

Discussion: The Secretary is aware that most accrediting agencies currently have confidentiality policies that prevent them from releasing information about an accredited institution or program to a third party without the prior approval of the institution. The Secretary is also aware that confidentiality is an important aspect of the peer review system on which accreditation is based.

However, the Secretary notes that under section 487(a)(15) of the HEA, by entering into a Title IV, HEA program participation agreement, an institution acknowledges the authority of the Secretary, accrediting agencies, State postsecondary review entities, and others to share with each other information pertaining to the institution's eligibility to participate in Title IV, HEA programs and any information on fraud or abuse by the institution. Therefore, institutions can have no genuine expectation that information they provide to their accrediting agencies pertaining to their Title IV, HEA program responsibilities, fraud, or abuse will be kept confidential from the Secretary or these other entities. Accordingly, the Secretary has revised § 602.4(e) to reflect that statutory provision. Thus, the information the Secretary may request from an accrediting agency under § 602.4(e) is limited to information concerning an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including its eligibility to participate in Title IV, HEA programs. As a result, an agency does not have to provide the Secretary with copies of an institution's self-study report, reports of on-site evaluations of the institution by the accrediting agency, or other documents maintained by the agency about the institution for the purpose of determining the institution's compliance with the agency's standards. However, the agency must provide any information contained in those documents that is relevant to the institution's compliance with its Title IV, HEA program responsibilities. The Secretary notes that, as discussed in connection with § 602.10, an accrediting agency must provide any document the Secretary requests relating to whether the agency is complying with the requirements of this part.

The Secretary appreciates the suggestion to develop a protocol for information sharing. As this suggestion relates to the Secretary's management of a regulatory provision, however, it does not need to be addressed in regulation. The Secretary intends to work with agencies to develop an appropriate protocol for information sharing, which will address the concerns raised about both the types of information releasable under a FOIA request and a central point of contact within the Department for the exchange of information.

The Secretary acknowledges the difficulties in requiring accrediting agencies to report "fraud" or "suspected fraud." As the statutory provision for information sharing specifically refers to fraud and abuse, however, the Secretary has added a provision to § 602.4 that requires agencies to notify the Secretary if they have reason to believe that an institution may be engaged in fraud or abuse. The Secretary has also added a provision requiring agencies to notify the Secretary if they have reason to believe an institution or program is not meeting its Title IV, HEA program responsibilities.

The Secretary acknowledges the importance of sharing with accrediting agencies information about Federal actions against accredited institutions but believes that information sharing goes beyond the cases identified by commenters to include notification to agencies when an accredited institution is referred for review under the State Postsecondary Review Program. The Secretary also acknowledges the importance of having the State postsecondary review entity notify accrediting agencies of the results of its reviews but believes this requirement is more appropriately placed in 34 CFR Part 667 rather than 34 CFR Part 602. The Secretary notes that an accrediting agency's responsibility for notifying State postsecondary review entities about its decisions is discussed in § 602.29 of these regulations. *Changes:* Section 602.4(e) has been revised to indicate that any agency must comply with the Secretary's request for information that is related to the institution's or program's compliance with its Title IV, HEA program responsibilities, including its eligibility to participate in Title IV, HEA programs. The Secretary has removed the limitation on an agency's duty to share information only in those situations where it does not conflict with accrediting agencies' policies on confidentiality. A requirement has been added that an accrediting agency must

notify the Secretary if the agency has reason to believe an institution or program is not meeting its Title IV, HEA program responsibilities or is engaged in fraud and abuse. A new section (§ 602.5) has been added outlining the Secretary's responsibilities for notifying accrediting agencies of Federal actions against accredited institutions or programs or referral of institutions to States under the State Postsecondary Review Program.

Subpart B—Recognition and Termination Procedures

Section 602.10 Application for Recognition.

Comments: The Secretary received many comments that the statute only allows the Secretary access to an accrediting agency's records, personnel, and facilities, on an announced or unannounced basis, during the application and review process, not during the entire recognition period. Some commenters described the Secretary's access as so broad that it constituted unwarranted search and seizure without probable cause. Some commenters were especially concerned about the possible release under a FOIA request of an agency's confidential materials that Department personnel examined as part of the Secretary's evaluation of an agency's application for recognition. With regard to the provision for unannounced visits by the Secretary, the Secretary received suggestions both to limit and not limit the use of these visits.

The Secretary received a number of comments that the application process and related recordkeeping requirements were particularly burdensome on accrediting agencies and that the burden reported in the **Federal Register** grossly underestimated the burden imposed by the regulations. Other commenters, however, believed that the application and recordkeeping requirements were not in any way burdensome and that the Secretary was requesting only the minimum amount of information needed to determine whether an agency was a reliable authority as to the quality of education or training provided by the institutions or programs it accredited.

With regard to the suggestion in the NPRM that the Secretary was considering allowing agencies to provide a simple statement of assurance that they complied with the requirements for recognition so as to reduce the burden on agencies applying for recognition, there was mixed reaction. Some commenters welcomed the simplification as a reduction in burden, but others thought it invited abuse and provided no protection of the public interest. Still others felt that the first review of an agency under the new regulations should be extremely thorough, but thereafter the simple assurance approach was reasonable.

Finally, the Secretary received a request to include in the regulations the provision contained in the statute that the Secretary shall give priority for review to those agencies whose institutions participate most extensively in Title IV, HEA programs and those agencies that are subject to the most complaints or legal actions.

Discussion: The Secretary believes that the statute requires the Secretary to ensure that recognized accrediting agencies stay in compliance with the requirements for recognition throughout the recognition period. Consequently, the Secretary believes the statute authorizes the Secretary to have access to an accrediting agency's records, personnel, and facilities not only during the application and review process but throughout the recognition period as well.

Regarding concerns about possible release of confidential agency materials under a FOIA request, the Secretary wishes to assure agencies that there are provisions under FOIA that protect most of the types of information the Secretary expects to obtain from agencies for purposes of § 602.10(b). For example, if the Secretary determined that an accrediting agency's actions with respect to three institutions clearly demonstrated the agency's failure to comply with the recognition requirements, the Secretary would not be required to release the names of the three institutions under a FOIA request. The Secretary would, of course, identify the institutions to the accrediting agency so that the agency would have a clear understanding of the basis on which the Secretary reached the determination that it failed to meet the criteria for recognition. While the Secretary will protect confidential agency materials to the full extent allowed under FOIA, the Secretary wishes to make it clear that this does not prevent the Secretary from using those materials against an agency should the Secretary determine that the agency is in violation of the criteria for recognition.

Regarding unannounced visits by the Secretary, which are authorized by the statute, the Secretary believes the use of such visits is a managerial decision and need not be regulated.

With regard to the overall burden reported in the **Federal Register**, the Secretary wishes to note that the estimate was based in part on information provided to the Secretary by various accrediting agencies as to the time required to complete an application and to meet other requirements contained in the NPRM. It was also based on the assumption that the Secretary would adopt the simple assurance approach described in the NPRM.

Finally, with regard to both the use of a simple assurance statement to simplify the application process and the inclusion of a set of review priorities, the Secretary believes these relate to the management of the recognition process and do not need to be addressed in regulation. The Secretary wishes to make it clear, however, that it is the Secretary's intent to minimize the overall burden to agencies through a simplification of the entire application process.

Change: The section that detailed the conditions under which the Secretary uses unannounced visits to determine an agency's compliance with the recognition requirements has been deleted. The phrase "analysis of" in § 602.10(a)(2) has been replaced with "evidence of" to conform to the simple assurance approach.

Section 602.11 Preliminary Review by the Secretary

Comments: Section 602.11(b)(2) of the proposed regulations provided that the Secretary's evaluation of an agency should include a review of information directly related to the institutions or programs accredited by the agency, as this information relates to the institution's or program's compliance with the agency's standards, the effectiveness of those standards, or the agency's application of those standards. The Secretary received a number of comments that supported this provision. In general, these commenters felt that it was important for the Secretary to monitor the extent to which individual agencies continued to accredit institutions that engage in fraud or abuse, particularly abuse of the Title IV, HEA programs. The Secretary received many more comments, however, that this provision was inappropriate and also redundant, given the provisions contained in § 602.11(b)(1)(i-iii). These commenters also believed the provision gave the Secretary approval authority over an agency's accreditation standards, which, in their opinion, was contrary to the statute.

The Secretary also received some comments related to the sharing of information used by the designated Department official to reach conclusions regarding an agency's compliance with the requirements for recognition. In

general, these commenters wanted the regulations to specify time frames for an agency's written response to the Department staff analysis concerning its application for recognition, to require the designated Department official to share with the agency all information used in reaching a decision about the agency's application, to require the Department to forward to an agency written reports on any announced or unannounced site visits, file reviews, or other reviews of the agency, and to allow the agency the opportunity for response to all these reports.

Finally, a number of commenters suggested that the regulations should include a requirement that the Secretary must publish a notice in the **Federal Register** when an accrediting agency is being considered for recognition and must also notify the State postsecondary review entities.

Discussion: The Secretary believes that the designated Department official's review of information directly related to institutions or programs accredited by an agency is central to the issue of whether the agency is a reliable authority as to the quality of the institutions of programs it accredits. Therefore, this provision must be retained. The Secretary notes that any information provided by the agency in accordance with § 602.4(e) of these regulations may also be reviewed by the designated Department official during any evaluation of the agency for compliance with the requirements for recognition.

With regard to the suggestion for including various time frames in this section, the Secretary appreciates the concerns that led commenters to request time frames and, consequently, agrees to include them in this section. The Secretary does not believe that agencies should have the right to receive a written report after every monitoring activity conducted by the designated Department official as these activities are conducted for the general purpose of gathering information about an agency's compliance with the requirements for recognition and, in that sense, are "predecisional."

Finally, it is already a requirement, under the Federal Advisory Committee Act, that the Secretary must publish an announcement of each Advisory Committee meeting, including those at which accrediting agencies are considered for recognition, but the Secretary acknowledges the importance of making that practice clear in these regulations. The Secretary also acknowledges the importance of notifying the State postsecondary review entities whenever an agency is being considered for recognition.

Changes: Time frames have been added for providing analyses and supporting documentation to an accrediting agency before the Advisory Committee meets on that agency's application for recognition. A provision for notifying State postsecondary review entities and other appropriate organizations of an agency's application for recognition has also been added. Finally, a provision has been added requiring the Secretary to publish a notice of the Advisory Committee meeting in the **Federal Register** and to invite interested parties to make presentations before the Advisory Committee.

Section 602.13 Review and Decision by the Secretary

Comments: Some commenters objected to the provision that the Secretary could decide to recognize an agency even if it did not meet all of the requirements for recognition, provided the Secretary determined that the noncompliance did not impair the agency's effectiveness. These commenters were particularly concerned that an accrediting agency that failed to meet a particular requirement might be recognized even though the reasons it failed to meet that requirement were within its control to correct. Other commenters, however, commended the Secretary's willingness to determine the appropriateness of a waiver when an agency's noncompliance with one or more requirements for recognition did not limit the effectiveness of the agency. To these commenters, the Secretary's flexibility was a demonstration that the Secretary sought a working partnership with accrediting agencies that was based on performance and trust.

With regard to an appeal of an Advisory Committee recommendation, some commenters felt that the 30-day time frame was too short. Other commenters requested that, in addition to the designated Department official and the agency, third parties be allowed to contest an Advisory Committee's recommendation concerning the recognition of an agency.

Finally, several commenters felt that the regulations should contain a time frame for the Secretary to make a decision regarding an agency's application for recognition.

Discussion: While the Secretary appreciates the concern of the commenters about granting recognition to an agency that does not meet all of the requirements for recognition, the Secretary believes that some flexibility is needed so that the Secretary may grant recognition to an agency that fails to meet all of the requirements, even if the circumstances are within the agency's ability to control.

The Secretary understands the concerns raised about the 30-day time frame for appealing an Advisory Committee recommendation. However, the Secretary wishes to note that an agency already has two opportunities prior to the Advisory Committee's recommendation during which it may state its case as to why a negative recommendation concerning its application for recognition is unwarranted. First, the agency may respond in writing to a negative recommendation by the designated Department official before that recommendation is forwarded to the Advisory Committee. Second, agency representatives have an opportunity to appear in person before the Advisory Committee to argue against a negative recommendation. Because of these two opportunities, the Secretary does not believe the 30-day time frame after the Advisory Committee makes its formal recommendation is unrealistic.

With regard to third parties appealing an Advisory Committee recommendation, the Secretary believes that the appropriate place for third-party comment is before the Advisory Committee reaches its decision on a recommendation, not after. With regard to a time frame for the Secretary's decision, the Secretary believes that this is appropriately a management issue and does not need to be specified in regulation.

Change: None.

Section 602.14 Limitation, Suspension, or Termination of Recognition

Comments: The Secretary received a suggestion from several commenters that any agency subject to the limitation, suspension, or termination of its recognition should be allowed to challenge the membership of the subcommittee that conducts a hearing on its case if, in fact, a subcommittee, rather than the full Advisory Committee, hears the case. Commenters believed a challenge should be allowed on the grounds of either conflict of interest or lack of expertise in either the type of agency subject to the action or its scope of accrediting activity. The Secretary also received a suggestion that the subcommittee should consist of five, rather than three, members and another suggestion that all negative actions recommended by the subcommittee should be discussed and acted upon by the full Advisory Committee. One

commenter suggested that an agency, rather than the Secretary, should be allowed to select members of the subcommittee.

Finally, the Secretary received several comments that the 30-day frame for an agency to respond to the designated Department official's notice of intent to limit, suspend, or terminate the agency's recognition was too short.

Discussion: Given the seriousness of the situation that would prompt the use of a subcommittee rather than the full Advisory Committee, the Secretary accepts the suggestion to expand its size. However, the Secretary believes the same seriousness that necessitates the use of a subcommittee demands prompt resolution by the subcommittee. Similarly, the Secretary does not accept the suggestion that the agency should be allowed to choose members of the subcommittee. Regarding an agency's right to challenge the composition of the subcommittee, it is the Secretary's intent to appoint to the subcommittee individuals who have no known conflict of interest. However, the Secretary acknowledges that there may be instances unknown to the Secretary in which a conflict of interest may exist with a subcommittee member. For this reason, the Secretary believes a challenge to the membership of the subcommittee on grounds of conflict of interest is warranted. The Secretary does not believe that a challenge on the basis of lack of expertise is justified because the members of the Advisory Committee from which the membership of the subcommittee is chosen have general expertise in the areas that come under the purview of the committee.

With regard to the 30-day time frame for responding to a notice of intent to limit, suspend, or terminate recognition, the Secretary believes that the seriousness of the situation that prompts such a notice demands equally prompt resolution to protect the public interest.

Changes: The size of the subcommittee has been increased from three to five members. Agencies are now allowed to challenge the composition of the subcommittee on grounds of conflict of interest.

Section 602.15 Requests for Reconsideration of the Secretary's Decision

Comments: In response to the Secretary's question in the NPRM as to whether this provision should be retained, given the additional appeal opportunities for an agency before the Secretary decides on its application, the Secretary received mixed responses. Several commenters felt the provision was superfluous. Those who did not had various suggestions for changing the procedures, from changing the time frames to clarifying the grounds for reconsideration.

Discussion: The Secretary concurs with the assessment of the commenters who believed that the provision for reconsideration was superfluous in light of the additional appeals procedures provided to agencies before the Secretary reaches a decision.

Change: The section has been deleted.

Section 602.16. Appeals Procedures

Comments: One commenter felt that this section was unnecessary because agencies can always appeal to the courts. Other commenters expressed concern that the NPRM did not provide for a meaningful appeal of adverse recognition decisions, as required by the statute. These commenters generally suggested using an intermediate administrative appellate body, such as an administrative law judge, to hear appeals. Other commenters supported the provision as written, fearing that an alternative administrative process within the Department would deplete the Department's resources inappropriately.

Discussion: The Secretary continues to believe, as described in the NPRM, that there can be no administrative appeal within the Department of a Secretarial decision since the Secretary, as head of the Department, makes all final decisions on behalf of the Department. The only appeal is through the courts. The Secretary wishes to note, however, that an agency for which the Advisory Committee recommends denial of recognition is afforded an opportunity to contest that recommendation before the Secretary reaches a final decision. To delay the Secretary's final decision by adding still another layer of appeal is, in the Secretary's opinion, unwarranted.

Change: None.

Subpart C—Criteria for Secretarial Recognition

Section 602.20 Geographic Scope of Recognition

Comments: The Secretary received one comment on this section from an individual who was concerned that the regulations might be construed to preclude a State from accrediting foreign and out-of-state institutions.

Discussion: Any accrediting agency, including a State, is free to define the geographic area for which it seeks recognition. In granting recognition, the Secretary defines the geographic area included in the agency's scope of recognition, which may or may not be the full geographic area requested by the agency. The Secretary bases the decision regarding the agency's geographical area of recognition on whether the agency is a reliable authority regarding the quality of education provided by the institutions it accredits throughout its geographic region.

Change: None.

Section 602.21 Administrative and Fiscal Responsibility

Comments: A number of commenters described the recordkeeping burden imposed by the proposed regulations as unduly onerous and in violation of Office of Management and Budget (OMB) guidelines that limit record retention requirements to three years. Several commenters indicated that the requirement to keep self-study reports for two complete accreditation or preaccreditation cycles was especially burdensome because of the large volume of materials typically included with these reports.

On other issues related to this section, one commenter felt that, to avoid conflicts of interest, members of the agency's decision making body should not also be members of the agency's governing board. Another believed that the Secretary should not have authority to determine whether an agency's staff is adequate, knowledgeable, and competent.

Discussion: With regard to the record retention requirement, the Secretary wishes to note that the requirement to keep records for two complete accreditation or preaccreditation cycles first appeared in the 1988 regulations governing the recognition of accrediting agencies. The NPRM for those regulations had initially included a provision for the indefinite retention of records. This was subsequently reduced to the current two-cycle requirement as a result of public comment on the recordkeeping burden.

The Secretary also wishes to note that the specific comment about the burden of keeping self-study reports for two full cycles was made by negotiators during the negotiated rulemaking sessions for these regulations. As a result, the Secretary carefully monitored the review of self-study reports by Department staff members conducting file reviews at agencies' headquarters during the past year and has determined that only the most recent self-study reports are particularly useful to staff. Consequently, the recordkeeping requirement for self-study reports has been reduced to the most recent report only.

With regard to the potential conflict of interest when the same individuals

serve as members of both the decision making body and the governing board of an agency, the Secretary appreciates the concern but believes that agencies should be allowed the flexibility to determine the composition of these bodies that best suits their needs. Further, as all agencies are required to have adequate policies dealing with conflicts of interest, the Secretary believes there is adequate protection of the public interest.

Concerning the issue of the Secretary's review of an agency's staff, the Secretary believes that the adequacy, knowledge, and capability of an accrediting agency's staff are appropriate factors to be considered in making a determination regarding whether the agency has the administrative responsibility to carry out its accrediting activities.

Change: Agencies must keep only the most recent self-study report.

Section 602.22 Demonstration of Accreditation Experience

Comments: Several commenters requested that accrediting agencies be required to demonstrate that their policies, evaluation methods, and decisions are accepted throughout the United States by recognized accrediting agencies. Their rationale was that acceptance by recognized agencies provided an important measure of an agency's reliability.

Discussion: The commenters rationale was presented to the Department by the non-Federal negotiators during negotiated rulemaking, and the Secretary acknowledges that demonstration of acceptance by recognized accrediting agencies can be an important factor to consider when evaluating an agency seeking recognition, particularly one seeking initial recognition. On the other hand, those interested in forming new accrediting agencies have expressed concern that this requirement imposes unfair hurdles for them and unduly stifles competition among accrediting agencies. The Secretary believes that agencies should not be required to demonstrate acceptance by recognized accrediting agencies but may certainly do so in their application for recognition, if they wish.

Change: None.

Section 602.23 Application of Standards

Comments: The Secretary received several suggestions for changes to this section. For example, one suggestion was to change the wording in § 602.23(a) from "[the agency] consistently applies and enforces written standards that ensure that the quality of education or training offered is of sufficient quality to achieve * * * the stated objective for which it is offered" to "[the agency] has written standards that it consistently applies to ensure that the education or training offered * * *." Another was to change the wording in § 602.23(b)(5) from "to ensure that its criteria and standards are appropriate and sufficiently comprehensive to evaluate the quality of the education of training provided * * * and are relevant to the education or training needs of affected students" to "to ensure that its criteria and standards are comprehensive and appropriate to the agency's objective of ensuring the quality of the institutions or programs it accredits."

The Secretary also received a number of comments directed to the requirement that agencies must have a systematic program of review to ensure what in previous regulations was described as the "validity and reliability" of its standards. Some commenters believed the wording in the NPRM was preferable to the phrase "validity and reliability" because of the various technical interpretations often given to those words. Others, however, found the wording in the NPRM vague and generally not as strong as the original wording. All commenters, regardless of their concerns about the specific wording, agreed that the requirement was exceedingly important in assessing whether the agency is a reliable authority as to educational quality.

Finally, several commenters requested that the limit on preaccreditation status be extended from five to six years to accommodate some agencies' practice of granting preaccreditation for six years and then reviewing the preaccredited institution or program every two years during the six-year period.

Discussion: The Secretary believes that the various wording changes suggested by commenters for § 602.23, of which two are described above, substantially reduce the effectiveness of the section by shifting the emphasis away from agencies' overall responsibility to have effective standards that ensure educational quality. With regard to the request that the maximum preaccreditation period be lengthened to six years, the Secretary understands the rationale presented by those agencies that conduct very thorough, and in some cases on-site, reviews of preaccredited institutions or programs throughout the preaccreditation period. However, the Secretary notes that not all agencies follow this practice of conducting thorough on-site reviews throughout the preaccreditation period. In these instances, the Secretary believes that the addition of another year of preaccreditation is not justified. For this reason, the Secretary does not accept the suggestion to extend the maximum preaccreditation period to six years

With respect to the "validity and reliability" issue, the Secretary has carefully considered all of the comments, especially those directed to the level of technical and statistical precision that is often associated with the words. However, in light of the Secretary's decision to list the twelve required accreditation standards in § 602.26 as they appear in the law, with no elaboration, the Secretary believes the strongest possible language is necessary in this section to make very clear the importance of this requirement in establishing sound accreditation standards. For the same reason, the Secretary believes it is necessary to add to this section a requirement that an agency must demonstrate that each of its standards provides both a consistent basis for determining the educational quality of different institutions and programs and a valid measure of the aspects of educational quality that it is intended to measure.

Changes: The requirement in § 602.23(b)(5) has been revised to incorporate the "validity and reliability" language. A requirement has been added that an agency must demonstrate that each of its standards is effective in determining educational quality.

Section 602.24 Accreditation Processes

Comments: The Secretary received numerous comments about the provision pertaining to unannounced site visits, most of which were directly related to the definitions of "prebaccalaureate vocation education" and "vocational education." Many commenters preferred that unannounced visits be restricted to those institutions offering non-degree vocational education, while others felt that all institutions offering vocational education, regardless of the credential awarded, should be subject to the requirement. Many commenters suggested that the term "institution that offers vocational education" should be restricted to those institutions whose predominant offerings are vocational. The word "predominant" was defined by these commenters to mean more than 75 percent of an institution's course offerings.

Several commenters also believed that the purpose of the unannounced site

visit as stated in the NPRM—to determine whether or not the institution or program continued to be in compliance with the agency's standards—was inappropriate. One commenter wanted the regulations to require accrediting agencies to publish clear guidelines for when and how an agency will conduct an unannounced visit.

Discussion: The Secretary has carefully considered all comments received on this issue, as well as those on the broader issue of the burden these regulations would impose on institutions and accrediting agencies. The Secretary has also reexamined the House-Senate Conference Report regarding the requirement for unannounced inspections of institutions that offer vocational education. This report describes the House language as requiring unannounced inspections of institutions that are predominately vocational in nature, while the Senate language speaks more generally of requiring these inspections for all institutions that offer vocational education. As this report also notes that the House deferred to the Senate on this issue, the Secretary believes it is the clear intent of Congress to require accrediting agencies to conduct unannounced inspections at all institutions that offer vocational education or training. The Secretary also believes that Congress' use of the term "inspection" rather than "review" or "evaluation" is evidence that the purpose of the unannounced visit is not necessarily to conduct a full review of the institution but to determine whether, at a minimum, the institution actually has the personnel, facilities, and resources it claimed to have, or appeared to have, either during its last evaluation by the accrediting agency or in subsequent reports to the agency. The Secretary wishes to point out that an accrediting agency has the flexibility to determine how best to carry out these unannounced inspections in a manner that achieves the purpose of these inspections but minimizes the cost to institutions and the burden to accrediting agencies. The agency also has the flexibility to examine, during the unannounced inspection, other aspects of an institution, such as whether it maintains adequate records or whether it actually provides the programs and support services it advertises. As agencies are responsible for monitoring institutions throughout their accreditation period, as described in § 602.24(b)(4), the Secretary wishes to point out that these unannounced inspections can and should serve a useful purpose in helping agencies meet this responsibility.

Changes: The term "unannounced site visit" has been replaced with "unannounced inspection," and the purpose of the unannounced inspection has been defined as indicated in the Discussion section.

Section 602.25 Additions to or Substantive Changes in Educational Programs

Comments: The Secretary received numerous comments regarding this section. Many commenters felt that there was no substantive change requirement in the statute so the requirement should be eliminated from the regulations. Other commenters, however, cited a different reason why the requirement should be eliminated: most accrediting agencies already have substantive change policies so there is no need for the Department to regulate the content of those policies. A host of commenters observed that, as worded, the requirement placed an undue reporting requirement on both accrediting agencies and institutions and an unnecessary burden on agencies by requiring them to grant prior approval to even the most insignificant of program changes or additions. Many also noted that the prior approval process would severely inhibit institutions' ability to respond in a timely manner to changing needs, as, for example, in health-related fields. Finally, commenters noted that many programs, such as those in community colleges, were routinely reviewed and approved by various State review boards before they could be offered, so requiring additional prior approval by accrediting agencies would only increase costs without any added benefit.

Discussion: The Secretary firmly believes that an agency cannot be a reliable authority as to the quality of education or training offered by an institution if the agency does not have a substantive change policy that requires prior approval by the accrediting agency before a substantive change can be included in the agency's grant of accreditation to an institution. At the same time, the Secretary acknowledges the burden the requirement proposed in the NPRM imposed on institutions and accrediting agencies. While the least burdensome approach would be to allow agencies simply to use their existing substantive change policies to meet this requirement, the Secretary believes this is unworkable and does not adequately protect the public interest because there is considerable variation among agencies as to what constitutes substantive change. Furthermore, as the NPRM documents, there have been several significant abuses in this area because of an agency's unwillingness to evaluate an institution's substantive change before including that change in the institution's grant of accreditation. Consequently, the Secretary believes that the Federal interest, as well as the interest of the general public, is best protected if a common core of changes that must be considered substantive is defined in regulation. To determine what should constitute this common core, the Secretary examined the topics institutional accrediting agencies typically include in their list of substantive changes that require prior approval and has included in this section only those that reflect the Secretary's principal concerns regarding institutions that undergo substantive change. The Secretary believes that the revised substantive change policy, which now applies only to institutional accrediting agencies, considerably reduces the burden on both accrediting agencies and institutions at the same time it provides adequate protection to the public.

The Secretary recognizes that there are many variables that must be taken into account in determining the type of review that an agency conducts before granting prior approval to an institution's substantive change. For this reason, the Secretary has decided to give accrediting agencies the flexibility to determine the procedures they will use in granting prior approval to an institution's substantive change. In some instances, this may involve a full-scale on-site evaluation of the entire institution. In others, it may involve a focused visit to examine the particular circumstances surrounding the change. In still others, it may involve simply a thorough review by agency staff of the institution's report on its ability to implement the substantive change without adversely affecting the institution's ability to continue to meet the agency's standards.

Changes: The substantive change requirement has been modified to limit the types of changes that must be given prior approval by an accrediting agency. The requirement now applies to institutional accrediting agencies only.

Section 602.26 Required Accreditation Standards

Comments: The Secretary received numerous comments about the required accreditation standards. Most commenters felt that the Federal government should not mandate how accrediting agencies defined their

standards. They also felt that the proposed regulations intruded on the autonomy of accrediting agencies, exceeded the statute, and were contrary to Executive Order 12866. In their opinion, the Secretary overreached his authority by specifying anything in this section that went beyond a mere restatement of the law on the required standards. These same commenters applauded the removal of the language on curricula, faculty, facilities, equipment and supplies, and student support services that had appeared in early drafts of the proposed regulations and urged the Secretary to do the same for the other eight standards specified in the law.

Several commenters argued that many of the specific responsibilities assigned to accrediting agencies by the various standards would force agencies into becoming government regulators. They also argued that these new requirements would require accrediting agencies to duplicate the efforts of the Department and the States and would substantially increase the paperwork burden on institutions and accrediting agencies. In their opinion, these requirements would be so burdensome to accrediting agencies in terms of time and personnel that they would shift the focus of accreditors away from their primary function—that of reviewing educational quality—to a role in which they served merely as investigative and enforcement agencies for the Federal government.

While the opinions expressed above were shared by the majority of commenters on this issue, they were by no means unanimous. Some commenters from the proprietary sector, for example, had no serious objection with the standards, noting that most of what was contained in the standards was already being examined to the degree of specificity contained in the proposed regulations by either their accrediting agencies, the State, or both. Others commenters felt that the standards, as written, protected students as well as Federal dollars. One commenter thought the introductory paragraph to the required standards section should be strengthened by requiring agencies to have quantitatively validated standards that were based on a rigorous assessment of the value added by the education or training.

Finally, one commenter expressed concern that the Secretary was exceeding the statute by requiring institutional accrediting agencies whose accreditation does not serve Title IV, HEA purposes to meet the student outcomes requirements of § 602.26(b)(9).

Discussion: The Secretary has given very careful thought to all the concerns raised with regard to this section. Of particular concern to the Secretary is how best to achieve an appropriate balance between the need for agencies to have rigorous standards in order to protect students' interests and the need for agencies to have flexibility in addressing these standards in order to reduce cost and burden to both agencies and institutions. Another important factor, in the Secretary's opinion, is the need to build a partnership among triad members that is based on mutual trust and allows each member the flexibility to determine the appropriate means to carry out its responsibilities under the HEA.

After considering all of these factors, the Secretary has decided to eliminate all but the statutory language for each of the 12 required standards. This approach eliminates many requirements that commenters found especially burdensome, such as that in § 602.26(b)(4) concerning annual financial audits. In addition, it allows accrediting agencies that already have rigorous standards in these areas to continue operating as they have, thus eliminating the need for additional cost to agencies and institutions to comply with the requirements of this section.

While the Secretary believes it is appropriate not to prescribe specific minimum regulatory standards elaborating on the standards in the statute, the Secretary also believes that the standards contained in the NPRM provide a sound framework for a thorough assessment of these areas. For this reason, the Secretary summarizes below the major provisions contained in the NPRM concerning the statutory standards. The Secretary believes these provisions are appropriate for agencies to address in their own standards for these areas. In addition, the Secretary believes that, in addressing the development of their own standards, accrediting agencies should consider any comparable Title IV, HEA program standards and any relevant and applicable State standards developed under the State Postsecondary Review Program. However, the Secretary wishes to make it clear that this does not prevent an accrediting agency whose standards do not include all of these provisions from being recognized by the Secretary, provided the agency can justify the appropriateness of its standards as reasonable applications of the statutory standards in light of its needs, the needs and circumstances of the institutions or programs it accredits, and the students they serve. Finally, the Secretary wishes to emphasize the importance of accrediting agencies' developing their standards in such a way that they minimize burden, overlap, and duplication at the same time they ensure overall educational quality.

The Secretary notes that for most of the standards discussed below there are comparable, or very similar, standards in section 494 and some in 498 of the HEA. The Secretary expects to take a leadership role in working with accrediting agencies and SPREs to ensure that the standards for all three members of the triad are complementary, rather than redundant.

Fiscal and administrative capacity as appropriate to the specified scale of operations. An accrediting agency's standard for assessing this area should generally address the overall quality of an institution's or program's fiscal and administrative capacity. The assessment should examine in particular whether the institution's or program's finances are sufficiently strong to enable it to meet, and appear likely to continue to meet for the foreseeable future, all of the agency's standards for accreditation. The assessment should also include some provision for the ongoing monitoring of an institution's or program's finances throughout any period of accreditation or preaccreditation granted by the agency.

The Secretary notes that section 494(d)(5) of the HEA contains a comparable SPRE review standard and sections 498 (c) and (d) of the HEA contain comparable Department standards.

Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising. An accrediting agency's standard for assessing these areas should generally address whether they are reasonable in light of an institution's or program's educational mission, reflect good practice, and accurately reflect actual practice.

The Secretary notes that sections 494(d) (1), (2), and (12) of the HEA contain comparable SPRE review standards.

Program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered. An accrediting agency's standard for assessing this area should generally address the appropriateness of an institution's program length and tuition and fees, taking into account such factors as program objectives and content, the types and locations of instructional delivery, the knowledge and skills necessary for students to reach competence in the field being taught, and generally accepted practices in higher education.

The Secretary notes that section 494(d)(7) of the HEA contains a comparable SPRE review standard.

Measures of program length in clock hours or credit hours. An accrediting agency's standard for assessing this area should generally address the appropriateness of an institution's or program's measurement of program length, taking into account such factors as program objectives and content, the types and combinations of instructional methodologies and delivery systems (including outside preparation as appropriate), the knowledge and skills necessary for students to reach competence in the field being taught, and generally accepted practices in higher education.

The Secretary notes that section 494(d)(9) of the HEA contains a comparable SPRE review standard.

Success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates. An accrediting agency's standard for assessing this area should generally address the success of an institution or program in meeting its educational objectives, as measured by the achievement of its students. Typically under this standard, an agency should require the institution or program to document and assess the educational achievement of students in verifiable and consistent ways, such as student grades, grade point averages, theses or portfolios, the results of admissions tests for graduate or professional school or other standardized tests, transfer rates to institutions offering higher level programs, job placement rates, completion rates, results of licensing examinations, evaluations by employers, follow-up studies of alumni, and other recognized measures of educational outcomes. The agency should also typically require the institution or program to use effectively the information obtained in this manner to improve student achievement with respect to the degrees or certificates offered. Finally, the agency should typically monitor in a systematic way the institution's or program's performance with respect to student achievement, including, as appropriate, completion rates, job placement rates, and pass rates on State licensing examinations, or other appropriate measures of occupational competency, to determine if performance is consistent with both the institution's or program's mission and objectives and any measures the agency may have for institutions' or programs' performance with respect to student achievement. For programs that provide vocational education, agencies should establish quantitative standards for completion rates, job placement rates, and pass rates on State licensing examinations.

The Secretary notes that section 494(d)(14) of the HEA contains a comparable SPRE review standard.

Default rates in the student loan programs established under Title IV of the Act, based on the most recent data provided by the Secretary. An accrediting agency's standard for assessing this area should generally address an institution's default rates in relation to the institution's overall ability to meet the agency's standards. Typically, an agency might evaluate an institution to determine whether the institution is out of compliance with its accrediting standards if the institution's latest cohort default rate under the Federal Stafford Loan or Federal Supplemental Loans for Students program equals or exceeds 25 percent or if it has increased significantly in relation to its rate the previous year. Under this standard, an agency is not expected to do the work of the Federal government with respect to institutional default rates. Rather, the agency is expected to review the default rate information provided by the Secretary, determine if that information calls into question the institution's compliance with agency standards, and take follow-up action as appropriate.

Record of student complaints received by, or available to, the agency. An accrediting agency's standard for assessing this area should generally address an institution's or program's record of student complaints received by or made available to the agency. Under this standard, the agency should typically review student complaints that relate to the agency's standards and take appropriate follow-up action with regard to those complaints. If necessary, the agency would refer complainants to appropriate Federal, State, and other agencies if the complaints do not relate to the agency's standards. Finally, it would require institutions or programs to make available to students the agency's mailing address or telephone number for complaints.

The Secretary notes that section 494(d)(11) of the HEA contains a comparable SPRE review standard.

Compliance with the institution's program responsibilities under Title IV of the Act: An accrediting agency's standard for assessing this area should generally address an institution's compliance with its Title IV, HEA program responsibilities in relation to the institution's overall ability to meet the agency's standards. The agency's assessment under this standard is based on program reviews, financial and compliance audits, audited financial statements, and any other information that the Secretary provides. Under this standard, the agency is not expected to do the work of the Federal government in reviewing institutions for compliance with their Title IV, HEA program responsibilities. Rather, the agency is expected to review the information provided by the Secretary, determine if that information calls into question the institution's compliance with agency standards, and take follow-up action as appropriate.

With regard to the concern raised by one commenter about the need for quantitatively validated standards, the Secretary notes that § 602.23(b)(5) requires agencies to have in place a program for the systematic evaluation of the validity and reliability of its standards. In light of the Secretary's decision to eliminate all but the statutory language for the required standards, this "validity and reliability" provision takes on added importance, as described in the discussion of the changes to § 602.23.

Finally, with regard to the concern about extending the requirement to have a standard assessing student achievement to institutions whose accreditation does not serve Title IV, HEA program purposes, the Secretary wishes to note that the overriding concern of the statute, as expressed in section 496(a) of the HEA, is that accrediting agency standards must contain a measure or measures of student achievement. Therefore, it is the Secretary's belief that extending the requirement to all agencies, not just those whose accreditation serves Title IV, HEA purposes, is warranted.

Changes: Paragraph 602.26(b) contains only the statutory language for the 12 required standards. Other changes to § 602.26 are discussed below.

Section 602.26(b)(13) The Institution's Practice of Making Refunds to Students

Comments: Many commenters objected to the inclusion of this requirement in the regulations on the grounds that section 496(g) of the HEA explicitly states that the Secretary may not establish standards for accrediting agencies that are not required by section 496. This point was argued by non-Federal negotiators during negotiated rulemaking as well.

Discussion: The Secretary has carefully reviewed the statutory provision on which this requirement was based and has also reexamined the requirement in light of refund policies established in the Student Assistance

General Provisions, 34 CFR part 668. It is the Secretary's belief that the regulatory language contained in 34 CFR part 668 is sufficient by itself to ensure that an institution's refund policy meets the requirements of the statute. Thus, there is no need for a requirement that accrediting agencies must have a standard that assesses institutions' refund policies.

Changes: The section has been deleted.

Section 602.26(c) Time Limit on Correcting Deficiencies

Comments: Many commenters expressed concern about the proposed 18-month time limit for institutions to come into compliance with an accrediting agency's standards. Some argued that in many instances, such as when an institution's financial situation is cause for concern, it takes considerably longer for an institution to come into compliance. Others argued that, for some programs, 18 months was too long.

Many commenters expressed concern about the requirement under consideration that accrediting agencies would have to take adverse action if they determined that an institution was unlikely to continue to be able to meet agency standards for the foreseeable future. This requirement, they argued, was totally unrealistic because agencies would have no objective basis on which to make such a determination. According to these commenters, the requirement would result in a determination that was pure conjecture on the part of accrediting agencies and would leave agencies vulnerable to lawsuits. Several commenters expressed an opposing view about this requirement, however, stating it was necessary to protect students who attended institutions whose ability to continue to provide a quality education was clearly questionable.

Discussion: The Secretary believes that some definitive time frame is necessary to ensure that institutions and programs make serious efforts to improve the quality of their offerings and to ensure that accrediting agencies take adverse actions when institutions fail to make those efforts. However, the Secretary also recognizes that, because of differing lengths of programs, the 18-month time frame is unrealistic for all types of institutions.

With regard to the provision that agencies should be required to take action if it appears that an institution or program will be unlikely to continue to meet an agency standard, the Secretary understands the concerns of commenters who opposed the requirement. However, because there is potential for serious harm to students enrolled in an institution or program the quality of whose education or training appears to be declining, the Secretary remains concerned about a marginal institution or program that might be accredited by an agency despite the agency's very serious concerns about its enrollment or financial trends. While the Secretary has not added to these regulations the specific requirement under consideration in the NPRM, the Secretary wishes to impress upon agencies the importance of the requirement, contained in § 602.24(b)(4) of these regulations, that they monitor institutions and programs throughout any accreditation or preaccreditation period to ensure that they give prompt and serious attention to any degradation in an institution's or program's ability to provide a quality education.

Changes: Different time frames for corrective action have been incorporated for different lengths of programs.

Section 602.27 Required Operating Procedures

Comments: The Secretary received many comments about the special actions accrediting agencies are required to take whenever institutions establish new branch campuses. Of particular concern to most commenters was the apparent inconsistency between the definition of "branch campus" in § 602.2 and the use of that term in this section. Also of concern to many commenters was the added requirement that accrediting agencies must visit "additional locations," which many felt went beyond the statute. One commenter felt that the required submission of a business plan for a new branch campus was unwarranted, burdensome and costly and had no intrinsic value.

The Secretary also received a number of comments about the requirement that accrediting agencies provide an opportunity for public comment about an institution's or program's qualifications for accreditation. Many felt this would subvert the accreditation process by evoking unjustified complaints. Others felt it required the agency to hold a public hearing every time an institution or program was evaluated for accreditation or reaccreditation. One commenter held an opposing view, however, preferring that agencies be required to hold public hearings for all accrediting decisions.

Finally, the Secretary received a number of suggestions for strengthening the various public disclosure requirements contained in this section, although a few commenters questioned the statutory authority for these requirements.

Discussion: The branch campus-additional location issue has already been discussed under the definition of "branch campus."

The Secretary notes that the additional information collection requirement related to the establishment of branch campuses—the submission of a business plan—is a statutory requirement and cannot be eliminated.

With regard to the issue of public comment when an institution or program is being considered for accreditation, the Secretary believes there should be opportunity for such comment but that there need not be a public hearing to obtain it. The Secretary believes further that an agency should be free to determine both the manner in which it publicizes that an institution is scheduled for review and the method it uses to obtain public comment.

With regard to the other public disclosure issues in this section, the Secretary believes that the more open an accrediting agency is with regard to its policies and practices, as well as the individuals involved in its accrediting activities, the better it is for the consumer. However, the Secretary believes it is best left up to the agency to determine its actual practice in this regard.

Changes: The term "branch campus" has been redefined, and the phrase "additional location" has been deleted from this section. The public disclosure requirements have been modified to clarify that a public hearing is not required to obtain public comment on an institution's or program's application for accreditation.

Section 602.28 Due Process for Institutions and Programs

Comments: One commenter expressed concern that the proposed regulations allowed an accrediting agency to deny an institution or program the right to appeal in person any adverse accrediting action. Another commenter noted that the regulations did not address the provision in section 496(e) of the HEA that prohibits the Secretary from recognizing the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of the institution's accreditation to initial arbitration prior to any other legal action. This same commenter felt that accrediting agencies should be required to adopt an initial arbitration procedure for handling disputes involving the loss of accreditation.

Discussion: With regard to the commenter's concern that institutions have the right to appeal an adverse action in person, the Secretary believes it is best to give agencies the flexibility to determine the appropriate procedures for appealing adverse actions. As the cost to an agency when an institution or program appeals an adverse action is generally substantial, the Secretary believes this approach minimizes the cost without causing undue harm to institutions that are subject to an adverse action.

With respect to the issue of arbitration, the Secretary recognizes that the statute does not specifically require an accrediting agency to agree to binding arbitration. However, the Secretary anticipates that many accrediting agencies will agree to arbitration since it significantly limits the cost and length of appeals of their final decisions. Moreover, if an accrediting agency does not agree to binding arbitration, an institution will be free to appeal a final adverse decision by the agency in the federal courts.

Change: None.

Section 602.29 Notification of Accrediting Decisions

Comments: The Secretary received several comments endorsing the addition of a requirement that an accrediting agency must notify the Secretary and the appropriate State postsecondary review entity of any final adverse accrediting action at the same time the agency notifies the institution or program. On another issue, most commenters believed it was inappropriate to require an accrediting agency to notify the Secretary and others prior to making a final decision that involved the denial or termination of accreditation, although some supported this provision. Some commenters believed that the time frame for requiring accrediting agencies to make available to the public the comments of an institution that loses its accreditation was unrealistic. Finally, one commenter requested clarification as to which agencies should be included in the phrase "the appropriate accrediting agencies" that an agency must notify of its decisions.

Discussion: As mentioned in the NPRM, the Secretary believes that accrediting agencies should be required to notify the Secretary and others at the same time they notify an institution or program of a final adverse action in order to prevent excessive draw-down of Federal funds by the institution or program. The Secretary appreciates the comments received in support of this position. With regard to the issue of notification before an adverse action is final, the Secretary shares the concerns of those who support the inclusion of a requirement to this effect but agrees with those commenters who expressed the concern that notification prior to final action could cause serious harm to institutions that subsequently had the adverse action reversed.

With regard to the 60-day time frame for obtaining the comments of an institution or program that is subject to a final adverse action, the Secretary believes it is in the best interest of the public to publish as soon as possible the reasons why the agency has denied, withdrawn, suspended, or terminated the accreditation of the institution or program. If the institution or program chooses not to make its comments about that action available to the accrediting agency within 60 days, then the accrediting agency is free to publish its statement of reasons without the accompanying statement of the institution or program.

With regard to "appropriate accrediting agencies," the Secretary believes that accrediting agencies should be free to determine which agencies should be notified but that, at a minimum, an agency should notify all recognized agencies that accredit an institution, or a program offered by the institution, if the agency takes an adverse action against the institution or one of its programs.

Changes: A requirement has been added that accrediting agencies must notify the Secretary and others at the same time they notify the institution or program of a final adverse accrediting action.

Section 602.30 Regard for Decisions of States and Other Accrediting Agencies

Comments: The Secretary received many comments opposing the requirement that institutional accrediting agencies must review their accreditation or preaccreditation of an institution if a programmatic accrediting agency takes adverse action against a program offered by the institution. Some commenters also expressed opposition to the requirement that programmatic accrediting agencies had to review an accredited program at an institution if the institutional accrediting agency took adverse action against the institution. Many commenters objected to the phrase "or should have known" in § 602.30(b).

Discussion: The Secretary believes that all agencies, including those that accredit only programs, should be required to take into account the decisions of States and other accrediting agencies when making any accreditation or preaccreditation decision involving an institution or program. The Secretary also believes that there may be occasions when a programmatic agency is the first agency to discover a serious problem that threatens the overall ability of the institution to provide a quality education. For this reason, the Secretary believes it is important for an institutional accreditor to review an institution for compliance with its accreditation standards if a programmatic agency takes adverse action against a program offered by the institution. The Secretary allows the institutional accrediting agency the flexibility to determine what an appropriate "review" is, however. It does not have to be a full on-site review of the institution.

With regard to agencies being accountable for actions about which they "should have known," the Secretary understands the concerns of commenters that agencies could be held accountable for knowing about the actions of another agency that failed to inform other agencies of its adverse actions. However, there are instances where information about an agency's adverse action against an institution or program becomes a matter of public record, and the Secretary believes that in these instances accrediting agencies should not be absolved from their responsibility to review the institution simply because another entity failed to notify them.

Changes: None.

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Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Interim Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC09

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Interim final regulations with invitation for comment.

SUMMARY: On December 20, 1993, the President signed the Higher Education Technical Amendments of 1993. These interim final regulations implement certain provisions of the technical amendments relating to the determination of institutional cohort default rates in the Federal Family Education Loan program. The Secretary invites comments on these regulations.

DATES: *Effective date:* These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of § 668.17 (f) and (h) which will become effective after the information collection requirements contained in this section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**. Comments on these interim final regulations must be received on or before June 13, 1994.

ADDRESSES: All comments concerning these regulations should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449.

FOR FURTHER INFORMATION CONTACT: Doug Laine, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC. 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 2(c)(55) of Public Law 103–208 amended section 435 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1085. This section modified the process governing institutions' appeals of their cohort default rates based on allegations of improper loan servicing and collection.

In a **Federal Register** Notice published March 22, 1994, 59 FR 13606, the Secretary requested comments on the procedures that should be established to implement the statutory amendments.

The Secretary indicated in the Notice that he intended to issue regulations establishing procedures for schools to appeal their default rates based on allegations of improper loan servicing or collection. The notice solicited public help in developing those procedures. The Secretary invited public comment on any aspect of implementing the statute, but in particular, the Secretary solicited comments on the following issues:

1. What procedures should the Secretary use in determining whether to exclude from the calculation of cohort default rates loans, the inclusion of which due to improper servicing or collection, would result in an inaccurate or incomplete calculation of a school's cohort default rate?
2. What procedures should be used for sampling of loan servicing and collection records?
3. What procedures should the Secretary provide for schools to review the information provided by the guaranty agencies to the Secretary for use in determining cohort default rates prior to calculation of the final rates?

The Secretary received 54 comments in response to the request for comments. Many of the comments are reflected in these rules. The Secretary's response to the suggestions made by the commenters that were not accepted is provided after the following discussion of the procedures established by these rules.

Appeals Based on Allegations of Improper Loan Servicing

Public Law 103–208 added section 435(a)(3) to the HEA to specifically provide certain institutions with an opportunity to appeal the calculation of their cohort default rates on the basis of allegations of improper loan servicing or collection. In particular, this opportunity will be available to institutions that: (1) Are subject to loss of eligibility for the FFEL Program under section 435(a)(2) of the HEA; (2) are subject to loss of eligibility for the Federal Supplemental Loans for Students (SLS) Program under section 428A(a)(2) of the HEA; or (3) have cohort default rates that equal or exceed 20 percent for the most recent year for which data are available. The statute requires the Secretary to take steps to ensure that these institutions have access to a representative sample of relevant loan servicing and collection records for a reasonable period of time, not to exceed 30 calendar days. Upon completion of the appeal, the Secretary will reduce an institution's cohort default rate to reflect the percentage of defaulted loans in the sample that are required to be excluded under section 435(m)(1)(B) of the HEA.

Public Law 103–208 also amended section 435(m)(1)(B) of the HEA to clearly provide that the Secretary would consider allegations of improper loan servicing or collection only in considering appeals of cohort default rate determinations filed by institutions. This change was made in response to certain court rulings which suggested that the Secretary was required to determine whether loans were properly serviced prior to making initial determinations of and releasing cohort default rates. Section 435(m)(1)(B) of the HEA now provides that, in considering appeals of cohort default rates under section 435(a)(3) of the HEA, the Secretary should exclude any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of the cohort default rate.

These regulations establish the procedures for implementing the appeal process provided by sections 435(a)(3) and 435(m)(1)(B) of the HEA. The regulations specify that an institution which is subject to the loss of participation in the FFEL program because of default rates equal to or in excess of 25 percent for the three most recent years for which rates are calculated or which has a cohort default rate which equals or exceeds 20 percent may appeal the calculation of the rate based on allegations of improper loan servicing or collection. These regulations do not specifically include institutions that are subject to the loss of participation in the Federal SLS Program because that program has been repealed by Congress effective July 1, 1994. See Public Law 103–66, section 4047(b) and (d). These regulations replace the former regulatory provision which related to the loss of SLS participation because that subsection becomes moot on the elimination of the SLS program. However, an institution that is currently subject to a loss of participation in the SLS program will have the opportunity to pursue an appeal under these procedures.

Under these regulations, once an institution receives notice from the Secretary that its cohort default rate or rates exceed the levels specified in section 435(a)(3) of the HEA, the institution will have 10 working days to initiate an appeal of the rate based on allegations of improper loan servicing or collection. The Secretary's default rate notification to the institution will include a list of all borrowers included in the calculation of the cohort default rate. To initiate an appeal, the institution must include the list of borrowers in its notification to the guaranty agencies that it is appealing the calculation of the cohort default rate based on allegations of improper loan servicing or collection.

Once the guaranty agency receives the institution's appeal, it must provide the institution with the loan servicing or collection records for a representative sample of the loans insured by the guaranty agency and included in the institution's cohort default rate. The sample must be identified by the guaranty agency and the universe estimate derived from the sample results must be acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. In some cases, the result may be that servicing and collection records for all the loans guaranteed by the agency and included in the institution's default rate will be sent to the institution. Once the sample is identified, the guaranty agency must send the loan servicing and collection records to the institution within 15 working days of receiving the institution's request. The guaranty agency's response to the institution must also include a list of certain dates that will assist the institution in reviewing the records and the Department in resolving the appeal. An agency may charge the institution a reasonable fee for copying and production of the records, not to exceed $10 per borrower file. The Secretary will charge a similar fee in response to a request for records maintained by the Department on behalf of the Higher Education Assistance Foundation.

After receiving the records from the guaranty agency, the institution has 30 calendar days to file its appeal with the Secretary. The regulations identify the material that must be submitted by the institution. The Secretary will review the appeal and issue a decision. The Secretary will assume that the records maintained by the guaranty agency in the normal course of business in the FFEL Program are correct unless the institution provides substantial evidence to the contrary. If the Secretary finds that the evidence submitted by the institution shows that some of the loans included in the sample of loans should be excluded from calculation of the cohort default rate, the Secretary will adjust the institution's cohort default rate to reflect the percentage of defaulted loans that should be excluded. The Secretary will use a statistically valid methodology to determine the estimate of the number of loans that should be excluded from the calculation of the cohort default rate and the confidence interval of the estimate. In determining the exact methodology, the Secretary will need to consider the number of loans in the sample, the number of guaranty agencies involved and other appropriate factors. The Secretary will notify the institution, in writing, of his decision on the appeal.

Section 435(m)(1)(B) of the HEA includes two prerequisites for exclusion of a loan from the cohort default rate calculation. Under the law, the institution must prove both (1) that the loans were serviced or collected improperly and (2) that the improper loan servicing and collection caused the student loan default. If either of these two requirements is not proven, the loan will not be excluded from the cohort default rate calculation.

These regulations reflect the Secretary's view, based on consideration of past appeals of cohort default rate determinations that, for purposes of a cohort default rate appeal, a loan is considered to have been serviced or collected improperly only if, under applicable rules, the Department would decline to pay reinsurance on the principal of the loan by reason of the improper servicing or collection. The HEA does not define the term "improper servicing or collection" used in section 435(m). Therefore, to determine what constitutes improper loan servicing and collection, the Secretary looks to its due diligence regulations, its published policies such as Appendix D to 34 CFR part 682 and other applicable policies and practices. There is no indication that the 1993 amendments to section 435(m) were intended to establish new concepts regarding what does and does not constitute improper loan servicing and collection. For that reason, the Secretary construes section 435(m) by reference to concepts developed over a period of years in the administration of the FFEL Program.

Section 435(m) of the HEA also specifies that a loan which has been subject to improper servicing or collection is excluded from calculation of the cohort default rate only if the default on the loan was "due to" improper servicing or collection and results in an inaccurate or incomplete calculation of the cohort default rate. The statute does not explain how improper servicing or collection could cause a cohort default rate to be inaccurate or incomplete. In *Atlanta College of Medical and Dental Careers, Inc.* v. *Riley*, 987 F.2d 821, 830 (D.C. Cir. 1993), however, the Court of Appeals assumed that a cohort default rate would be inaccurate or incomplete if it contained loans which defaulted due to improper servicing or collection. The Secretary considers that interpretation to be reasonable. The Court of Appeals in *Atlanta College* also concluded that the type of causal link between improper servicing and default on a loan is properly left to the Secretary. The Secretary believes that a stringent showing of default causation is appropriate. Section 435(m) of the HEA does not include any general "causation" challenge that would permit an institution to appeal the calculation of its default rates on the basis that its students defaulted for reasons beyond the institution's control. Moreover, Congress set tight constraints on the time periods for challenges to the calculation of the cohort default rates and clearly did not contemplate a time-consuming, heavily burdensome process for determining default causation.

Based on these factors, the Secretary has determined that section 435(m) should be interpreted to allow only a limited loan servicing challenge. Accordingly, these regulations reflect the Secretary's determination that, for purposes of the calculation of a cohort default rate, improper servicing or collection is considered to have caused a default only if the improper servicing or collection resulted in a lack of notification to the borrower that he or she must begin repaying the loan. The Secretary believes that once the borrower has been informed of the obligation to repay the loan, the institution cannot show that a resulting default was due to the alleged improper servicing. The position reflected in these regulations has its genesis in certain decisions of the Secretary which resolved appeals of cohort default rate determinations on a case-by-case basis. Case-by-case adjudication is a permissible approach to decision making under applicable law. See *NLRB* v. *Bell Aerospace Corp.*, 416 U.S. 267, 294 (1974). However, the Secretary's adjudications resolving individual appeals have not established rules of general applicability. As explained in more detail in the comment and response section of this document, the Secretary has considered a variety of

proposed standards for adjudication of appeals based on allegations of improper servicing and collection. Some of these approaches would arguably broaden the appeal standard for institutions, while others reflect a more narrow scope than is reflected in the Secretary's adjudications to date. After careful consideration of these alternatives, the Secretary concludes that the general construction of section 435(m) of the HEA reflected in his most recent appeal decisions faithfully implements Congressional intent and fairly balances the rights of all those affected by those decisions. The Secretary particularly invites comments as to whether there are other types of improper servicing that should be considered to have "caused" a default for purposes of calculation of a cohort default rate and the rationale for any such suggestion. Review of cohort default rate information.

Public Law 103–208 also amended section 435(m)(1)(A) of the HEA to provide, effective October 1, 1994, that institutions will have an opportunity to review and correct errors in the information provided by the guaranty agencies to the Secretary for use in calculating cohort default rates. These regulations add paragraph (h) to § 668.17 to establish procedures for this review.

Under the regulations, the Secretary will provide each institution which has a draft default rate equal to or in excess of 20 percent with a copy of the records provided by each guaranty agency in regard to loans made to borrowers for attendance at the institution which were insured by that guaranty agency. Institutions with draft default rates under 20 percent may request copies of the records. These records will be accompanied by a notice indicating the institution's draft default rate. This draft default rate will not be considered a final agency decision and will not be otherwise voluntarily released by the Secretary.

After receiving the information from the Secretary, the institution will have 30 calendar days to review the information and notify, in writing, the appropriate guaranty agency of any information included in the cohort default rate which it believes is incorrect. The institution should also send the agency any evidence which it believes supports its contention that the information provided by the guaranty agency to the Secretary is inaccurate. The guaranty agency shall review the institution's challenge and respond within 30 calendar days. If the guaranty agency agrees with the institution, the information used to calculate the cohort default rate will be adjusted prior to the release of the official cohort default rates. If the guaranty agency does not confirm the error alleged by the institution, the institution may use the data provided by the guaranty agency as part of an appeal of the calculation of the default rate based on the allegedly erroneous data after the rates are released.

The Secretary intends to continue his practice of allowing institutions with a cohort default rate equal to or in excess of 20 percent for the most recent year for which rates have been calculated to challenge the calculation of the rate based on allegations that erroneous data were included in the calculation. However, all institutions must satisfy the time deadlines for filing challenges under the regulations.

The Secretary believes that section 435 only provides an opportunity for the institution to review and correct errors in the information provided to the Secretary by the guaranty agency. The statute does not contemplate that all allegations of error will be resolved prior to release of the final default rates. The regulations, therefore, allow an institution to appeal the calculation of a cohort default rate based solely on allegations of erroneous data. However, to ensure that appeals can be decided on a timely basis, the regulations provide that an institution can only base an appeal on allegations that were raised to the guaranty agency during the review of the draft cohort default rate. The Secretary believes that this process will benefit the institutions, guaranty agencies and the public by shortening delays that have been experienced in the appeal process and will result in more timely decisions.

Effect on Pending Default Rates

The Secretary received a number of comments regarding the effect of the changes to section 435(a)(3) and (m) on the current official cohort default rates. As the Secretary noted in the **Federal Register** notice, Public Law 103–208 does not specifically provide for reopening prior final determinations. However, the Secretary has been convinced by the commenters to allow institutions to challenge their current cohort default rates on the basis of allegations of improper loan servicing or collection. Accordingly, the regulation allows institutions identified in section 435(a)(3) of the HEA to file an appeal of the current cohort default rates based on allegations of improper loan servicing. Thus, institutions with cohort default rates equal to or in excess of 20 percent for fiscal year 1991 (including institutions subject to the loss of SLS participation based on a fiscal year 1991 cohort default rate in excess of 30 percent) may challenge the 1991 cohort default rate. Similarly, institutions which are subject to the loss of FFEL program participation based on cohort default rates for fiscal years 1989, 1990 and 1991 may challenge those rates. The regulation specifies that the time limits for challenging these rates will begin on the date that the regulations become effective. The Secretary intends to notify institutions of the effective date of these regulations once that date is determined. The prior default rates will be considered effective until the appeal process is completed and a new rate issued.

The Secretary notes that cohort default rates for fiscal year 1992 will be issued during the summer of 1994. Institutions which are interested in challenging their current cohort default rates may want to wait until after the new rates are issued. An institution with a cohort default rate in excess of one of the threshold levels for fiscal year 1991 may find that its fiscal year 1992 cohort default rate is below the threshold and that the institution is no longer subject to sanctions based on excessive cohort default rates. Thus, an institution may want to consider whether filing a challenge of the current default rates is worth the time, expense and resources needed to prepare and submit an appeal of a rate that may soon be irrelevant. The Secretary also notes that the regulations provide that once an institution has challenged a cohort default rate for a particular year and received a final decision from the Secretary, that decision is binding in any future challenge to the default rate filed by the institution.

Analysis of Comments and Responses

Comment: The commenters provided a number of different definitions of the term "improper servicing or collection" of a loan. A number of respondents to the request for comments suggested that the Secretary should remove from the calculation of the cohort default rate any loan that was not serviced in strict compliance with the Department's due diligence requirements in 34 CFR 682.411. Some commenters suggested that a loan on which a default claim has been paid should be considered properly serviced or collected on the grounds that a claim would not have been paid if servicing was not proper. Other commenters suggested that the Secretary should consider a lender's failure to grant a deferment to be improper loan servicing or collection. Some commenters also suggested that guaranty agency collection efforts

should be considered in evaluating whether improper servicing or collection has occurred.

Response: The Secretary's view of the satutory term "improper servicing or collection" is discussed earlier in this document. The Secretary does not agree with the suggestion that Congress intended to establish a new standard for proper servicing or collection. Instead, the Secretary believes it is appropriate to rely on the concepts and requirements developed and applied by the Department over the years. The requirements in § 682.411 are designed to ensure that lenders and guaranty agencies that are requesting Federal benefits meet certain standards in collection as a requirement for receiving those benefits. These requirements have never been intended to set forth standards which if not followed in their entirety provide an excuse for borrowers to refuse to repay their loans. Similarly, they are not intended to provide protection for institutions that fail to meet the statutory requirements for continued participation in the loan programs. Congress has determined that the institutions bear a significant responsibility for defaults in the FFEL program. The Secretary does not believe that a lender's failure to strictly satisfy the requirements for Federal benefits should excuse the institution from the statutory consequences of its high default rate.

The Secretary also does not agree that it would be appropriate to assume that all claims which have been paid as defaults have been properly serviced or collected. While failure to pay a default claim may be based on a finding of improper servicing or collection, payment of a default claim is not absolute proof of compliance with the Secretary's requirements. Accordingly, institutions should have the opportunity to review servicing and collection records relating to these loans.

In regard to the issue of a lender's failure to respond to deferment requests, the Secretary notes that he has consistently treated deferment errors as "erroneous data" in adjudicating appeals of cohort default rate determinations. This treatment benefits the appealing institution since a determination that erroneous data was reported results in the affected loan being removed from the calculation of defaulted loans (the numerator), but it remains in the calculation of loans in repayment (the denominator). In contrast, loans which are excluded from the calculation of the cohort default rate based on improper servicing or collection are excluded from both the numerator and the denominator. The Secretary does not believe there is any reason to change his treatment of deferment errors.

Finally, the Secretary notes that guaranty agency servicing is not relevant to the default rate calculation. A guaranty agency does not begin to service a loan until it has already defaulted and, thus, its servicing does not affect the institution's cohort default rate.

Comment: Some commenters proposed that the Secretary remove from the calculation of the cohort default rate loans on which the lender did not request preclaims assistance from the guaranty agency or on which the agency did not provide notice of the request to the institution.

Response: A lender's failure to request preclaims assistance could, in certain circumstances, be considered improper servicing or collection if it would result in the loss of reinsurance on the principal of the loan based on the applicable rules and policies and if the borrower defaulted due to lack of notification that the time for repayment had begun.

Comment: Some commenters suggested that an institution should remain eligible to participate in the FFEL program during the appeal process.

Response: As provided in current regulations, an eligible institution that files and pursues an appeal in accordance with the regulatory requirements will be able to continue to participate in the FFELP until and unless the Secretary issues a decision determining that the institution's cohort default rates remain above the threshold limits.

Comment: Some commenters urged the Secretary to allow all institutions to challenge their default rates on the basis of improper servicing or collection.

Response: Section 435(a)(3) specifically allows only institutions with cohort default rates above certain threshold levels to challenge their rate based on allegations of improper loan servicing. The Secretary believes that this limitation was intentional and reasonable in light of the significant burdens placed on guaranty agencies and the Secretary in reviewing challenges based on allegations of improper loan servicing or collection.

Comment: Some commenters urged the Secretary to require institutions to provide evidence of improper loan servicing prior to requesting access to loan servicing records.

Response: The HEA does not require institutions to provide evidence of improper loan servicing or collection prior to filing a challenge of its cohort default rates.

Comment: Some commenters requested that institutions be required to submit a complete appeal before the guaranty agency is required to meet the time deadlines required by the regulations.

Response: These comments were based on the assumption by the commenters that the institution would be required to submit evidence of improper loan servicing before the guaranty agency would be required to respond to the institution's appeal. Under these regulations, the institution will only need to notify the guaranty agency that it is appealing the calculation of the cohort default rate and provide a copy of the list of borrowers included in the calculation of the rate. Accordingly, the Secretary believes it is unlikely that an institution will not submit a complete notification to the guaranty agency. However, an institution which does not submit the notice and list to the guaranty agency as required by the regulation may be barred from pursuing an appeal.

Comment: Some commenters suggested that loans serviced by lenders or servicers who have been designated as exceptional performers under section 428I of the HEA should not be included in any loans reviewed for improper servicing or collection on the ground that these loans are presumed to be serviced or collected properly.

Response: The Secretary does not believe that it is appropriate to exclude loans serviced by exceptional performers from the process for determining appeals based on allegations of improper servicing or collection. The exceptional performer designation is related only to the lender's receipt of payments from the guaranty agency. It should not be used to limit the institution's opportunity to challenge the calculation of its cohort default rate.

Comment: A number of commenters urged the Secretary to provide institutions more time to complete and submit appeals to the guaranty agencies and the Secretary.

Response: The Secretary believes that the regulations provide sufficient time for an institution to complete and submit appeals. The Secretary believes that the regulations are consistent with the tight time constraints on the time period for appeals included in the HEA.

Comment: Some commenters recommended that the Secretary consider the quality of education provided by an institution in determining whether an institution

should be sanctioned based on its excessive default rates.

Response: The statute sets forth specific grounds for challenges to an institution's cohort default rates. The quality of education is not included as a basis for appeal of a default rate based on allegations of improper loan servicing or collection. The Secretary notes, however, that institutions which are subject to the loss of FFEL Program participation under section 435(a)(2) of the HEA may appeal on the grounds of exceptional mitigating circumstances as defined by the Secretary's regulations.

Comment: Some commenters recommended that the Secretary grant an institution's appeal if the guaranty agency does not provide the servicing and collection records within the time set forth in the regulations.

Response: The Secretary does not believe it is appropriate to automatically grant an institution's appeal if the guaranty agency misses a deadline to provide records to the institution. In most cases, the institution continues to participate in the program and is not harmed by a short delay. The Secretary believes that the guaranty agencies must take appropriate steps to provide records within the regulatory time frames. However, in appropriate cases, the Secretary may consider taking action to levy a financial penalty or limit, suspend or terminate a guaranty agency's participation in the FFEL program based on violations of the regulatory time frames.

Comment: One commenter recommended that loans which have been improperly serviced or collected be removed only from the numerator of the calculation of the cohort default rate but not from the denominator.

Response: The Secretary construes section 435(a)(3) to require that loans which are determined to have defaulted due to improper loan servicing or collection be "exclude[d]" from the calculation of the cohort default rate entirely.

Executive Order 12866

The contents of this final rule have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the procedures in this rule.

The potential costs associated with the contents of this rule are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the FFEL program effectively and efficiently. In assessing the potential costs of these procedures, the Secretary has determined that the benefits of these procedures justify the costs.

The Secretary has also determined that the contents of this rule do not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

The contents of this rule are consistent with the requirements of the HEA and promote the President's priorities.

Sections 668.17 (f) and (h) contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. These regulations affect institutions of higher education and guaranty agencies that participate in the Federal Family Education Loan Program. The Secretary needs the information to properly administer certain aspects of that program. The collection and reporting burden for the 300 institutions which challenge the calculation of their cohort default rates under these provisions is expected to increase by 15,600 hours. The collection and reporting burden for the 46 guaranty agencies which must respond to the institutions' requests under these regulations is expected to increase by 2,576 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. Comments on the burden estimate must be received on or before May 31, 1994.

Invitation to Comment

The Secretary recognizes that many participants in the FFEL program have an interest in these procedural rules. In light of that interest, the Secretary is requesting comment on these rules. The Secretary will consider any comments received within the designated comment period in determining whether to make any changes in these rules. After reviewing any comments received during the comment period, the Secretary will publish changes to the regulation or will publish a notice in the **Federal Register** indicating that no further changes will be made.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, the Secretary has determined that the public interest requires the immediate issuance of this interim final rule.

Under the Administrative Procedure Act, 5 U.S.C. section 551, *et seq.*, procedural amendments to regulations do not require prior public notice and an opportunity for public comment. The changes being made by this rule do not affect the substantive requirements or the underlying laws or rules; nor do they modify or revoke existing rights or obligations, or create new ones. These regulations merely establish procedures to implement the requirements of sections 435(a)(3) and 435(m)(1)(B) of the HEA. Therefore, public comment is not required under 5 U.S.C. 553(b)(A).

In addition, the Secretary has determined that notice and comment is impracticable, unnecessary and contrary to the public interest. The procedures included in these rules are needed to adjudicate appeals from the initial determinations of cohort default rates for institutions. The Secretary is required by section 435(m)(4) of the HEA to publish cohort default rates for each institution for which a rate is calculated at least every fiscal year. The cohort default rates to be released for the current fiscal year are currently scheduled to be released during the summer of 1994. For the appeal procedures to be in place prior to the release of the default rates, the procedures must be published by May 1, 1994. Moreover, the Secretary invited public comment on what the procedures should be and received and considered the comments received in preparing this interim final rule. Accordingly, the Secretary has determined that public comment on this interim final rule is not required under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program.)

Dated: April 21, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c and 1141, unless otherwise noted.

1. Section 668.17 is amended by adding paragraphs (f), (g) and (h) as follows:

§ 668.17 Default reduction measures.

* * * * *

(f) *Appeal based on allegations of improper loan servicing or collection*—(1) *General.* An institution that is subject to loss of participation in the FFEL programs under paragraph (a)(1) of this section or has been notified by the Secretary that its cohort default rate equals or exceeds 20 percent for the most recent year for which data are available may include in its appeal of that loss or rate a challenge based on allegations of improper loan servicing or collection. This challenge may be raised in addition to other challenges permitted under this section.

(2) *Standard of review.* An appeal based on allegations of improper loan servicing or collection must be submitted to the Secretary in accordance with the requirements of this paragraph. The Secretary excludes any loans from the cohort default rate calculation which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's complete and timely appeal to the Secretary, result in an inaccurate or incomplete calculation of the cohort default rate.

(3) *Procedures.* (i) The following procedures apply to appeals from cohort default rates issued by the Secretary during Federal fiscal year 1994 and subsequent years. Upon receiving notice from the Secretary that the institution's cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section or that its most recent cohort default rate equals or exceeds 20 percent, the institution may appeal the calculation of the cohort default rate based on allegations of improper loan servicing or collection. The Secretary's notice includes a list of all borrowers included in the calculation of the institution's cohort default rate.

(ii) To initiate an appeal under this paragraph, the institution must notify, in writing, each guaranty agency that guaranteed loans included in the institution's cohort default rate that it is appealing the calculation of the cohort default rate. The notification must be received by the guaranty agency within 10 working days of the date the institution received the Secretary's notification. The institution's notification to the guaranty agency must include a copy of the list of students provided by the Secretary to the institution.

(iii) Within 15 working days of receiving the notification from the institution, the guaranty agency must provide the institution with a representative sample of the loan servicing and collection records relating to borrowers whose loans were guaranteed by the guaranty agency and that were included as defaulted loans in the calculation of the institution's cohort default rate. In selecting the representative sample of records, the guaranty agency must use the following procedures:

(A) The guaranty agency shall list in social security number order all loans made to borrowers for attendance at the institution and guaranteed by the guaranty agency and included as defaulted loans in the calculation of the cohort default rate which is being challenged by the institution.

(B) From the population of loans identified by the guaranty agency, the guaranty agency shall identify a sample of the loans. The sample must be of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of loans that should be excluded from the calculation of the cohort default rate under this paragraph.

(C) Once the sample of loans has been established, the guaranty agency shall provide a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the guaranty agency and institution agree that all or some of the records can be provided in another format.

(D) The guaranty agency may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(E) After compiling the servicing and collection records for the loans in the sample, the guaranty agency shall send the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution. The guaranty agency shall also send a copy of the list of the loans included in the sample and the description of how the sample was chosen to the Secretary at the same time the material is sent to the institution. The list of loans included in the sample must include the following information:

(*1*) The loans included in the sample listed in order by social security number;

(*2*) For each loan listed, the last date of attendance, the date entered repayment, the date of the first payment missed by the borrower and the default date listed in the guaranty agency's records.

(iv) After receiving the relevant loan servicing and collection records from all of the guaranty agencies that insured loans which are included in the cohort default rate calculation, the institution has 30 calendar days to file its appeal with the Secretary. An appeal is considered filed when it is received by the Secretary. If the institution is also filing an appeal under paragraph (d)(1)(i) of this section, the institution may delay submitting its appeal under this paragraph until the appeal under paragraph (d)(1)(i) is submitted to the Secretary. As part of the appeal, the institution must submit the following information to the Secretary:

(A) A list of the loans which the institution alleges would, due to improper loan servicing or collection, result in an inaccurate or incomplete calculation of the cohort default rate.

(B) Copies of all of the loan servicing or collection records and any other evidence relating to a loan that the institution believes has been subject to improper servicing or collection. The records must be in hard copy or microfiche format.

(C) An explanation of how the alleged improper servicing or collection resulted in an inaccurate or incomplete calculation of the cohort default rate.

(D) A summary of the institution's appeal, listing the number of loans insured by each guaranty agency that were included in the calculation of the institution's cohort default rate, and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency.

(E) A certification by an authorized official of the institution that all information provided by the institution in the appeal is true and correct.

(v) The Secretary or his designee reviews the information submitted by the institution and issues a decision.

(A) In making a decision under this paragraph the Secretary presumes that the information provided by the guaranty agency is correct unless the institution provides substantial evidence showing that the information maintained by the guaranty agency is not correct.

(B) If the Secretary finds that the evidence presented by the institution shows that some of the loans included in the sample of loan records reviewed by the institution should be excluded from calculation of the cohort default rate under paragraph (f)(2) of this section, the Secretary reduces the institution's cohort default rate, in accordance with a statistically valid

methodology, to reflect the percentage of defaulted loans in the sample that should be excluded.

(vi) The Secretary notifies the institution, in writing, of the decision.

(vii) An institution may not seek judicial review of the Secretary's determination of the institution's cohort default rates until the Secretary or his designee issues the decision under paragraph (f)(3)(v) of this section.

(viii) For purposes of this paragraph a loan is considered to have been serviced or collected improperly only if, under applicable rules, the Department would decline to pay reinsurance on the principal of the loan.

(ix) For purposes of this paragraph, improper servicing or collection is considered to have caused a loan to default for purposes of the calculation of the cohort default rate only if the improper servicing or collection resulted in a failure to notify the borrower that he or she must begin repaying the loan.

(x) For cohort default rates issued by the Secretary for federal fiscal years from 1989 to 1991, the procedures in this paragraph apply, except that the 10-day period for initiating an appeal with the guaranty agency starts on the effective date of these regulations.

(g) *Effect of decision.* An institution may challenge the calculation of a cohort default rate under this section no more than once. The Secretary's determination of an institution's appeal of the calculation of a cohort default rate is binding on any future appeal by the institution. An institution that fails to challenge the calculation of a cohort default rate under this section within 10 working days of receiving notice of the determination of the cohort default rate is prohibited from challenging that rate in any other proceeding before the Department.

(h) *Review of default rate data.* Effective on October 1, 1994, an institution has an opportunity to review and correct the information provided to the Secretary by the guaranty agencies for the purpose of calculating a cohort default rate on the loans to be included in the calculation of the institution's cohort default rate before the final rate is calculated.

(1) (i) Once the Secretary has received the information used in calculating the cohort default rates from the guaranty agencies, the Secretary calculates draft cohort default rates for each institution.

(ii) The Secretary sends all institutions with draft cohort default rates equal to or in excess of 20 percent a copy of the information provided by the guaranty agencies in regard to loans included in the institution's cohort default rate.

(iii) An institution with a draft cohort default rate less than 20 percent will receive a notice of the draft default rate and may request a copy of the information provided by the guaranty agencies within 10 working days of receiving the notice from the Secretary. Upon receiving the request from the institution, the Secretary will send the institution a copy of the information requested. The time frames provided in this paragraph will not start until the institution receives or should have received the information from the Secretary.

(2) Within 30 calendar days of receiving the default rate information from the Secretary, the institution must notify the guaranty agency of any information included in the default rate data that it believes is incorrect. The institution must also provide the guaranty agency with any evidence that it believes supports its contention that the default rate data are incorrect.

(3) Within 30 calendar days of receiving the institution's challenge under paragraph (h)(2) of this section, the guaranty agency shall respond to the institution's challenge. The guaranty agency's response must include a response to each allegation of error made by the institution and any evidence supporting the agency's position.

(4) The guaranty agency shall provide a copy of its response to the institution to the Secretary and identify any errors in the information previously submitted to the Secretary.

(5) The information used to calculate cohort default rates will be changed to reflect allegations of error made by an institution and confirmed by the guaranty agency prior to releasing final cohort default rates.

(6) The draft default rate issued by the Secretary under paragraph (h)(1) of this section may not be considered public information and may not be otherwise voluntarily released by the Secretary or the guaranty agency.

(7) An institution may not appeal a cohort default rate under paragraph (d)(1) of this section on the basis of any alleged errors in the default rate information unless errors were identified by the institution in a challenge to its preliminary default rate under paragraph (h) of this section.

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Friday
April 29, 1994

Part V

Department of Education

34 CFR Part 667
State Postsecondary Review Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 667

RIN 1840–AB89

State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes final regulations to implement the State Postsecondary Review Program (SPRP) authorized under title IV, part H, subpart 1 of the Higher Education Act of 1965, as amended (HEA). Under the SPRP, the Secretary enters into an agreement with a State under which the State designates a State postsecondary review entry (SPRE) to be responsible for conducting or coordinating reviews of institutions of higher education referred to the State by the Secretary under specific statutory provisions. The purpose of the SPRE reviews is to determine whether those institutions should continue to participate in the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs). The SPRE reviews institutions on the basis of State standards developed in consultation with institutions located in the State. The Secretary reimburses SPREs for costs they incur under the SPRP from appropriated funds.

EFFECTIVE DATE: These regulations take effect July 1, 1994, with the exception of §§ 667.3, 667.4, 667.8, 667.12, 667.15, 667.21, 667.22, and 667.26. Sections 667.3, 667.4, 667.8, 667.12, 667.15, 667.21, 667.22, and 667.26 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Kolotos, U.S. Department of Education, 400 Maryland Avenue SW., room 4318, ROB–3, Washington, DC 20202–5244. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the changes made to the HEA by the Higher Education Amendments of 1992 (Pub. L. 102–325) and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208).

On January 24, 1994 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (59 FR 3604). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Statement of the scope and purpose of the SPRP (page 3606);

Definitions of terms used in this part, including *education and general expenditures, professional program*, and *vocational program* (page 3606);

Elements contained in the agreement between a State and the Secretary (pages 3607–3608);

Criteria the Secretary uses to refer institutions to a SPRE for review (page 3608);

SPRE selection of institutions for review (pages 3608–3609);

Notice to SPRE of Federal actions (page 3609);

Situations in which an institution has locations in more than one State (page 3609);

Allotment formula to determine each State's annual allotment of funds (page 3609);

Procedures under which a State applies for funds (pages 3609–3610);

Procedures under which the Secretary approves a State's application for funds (pages 3610–3611);

Allowable costs and activities reimbursable under the SPRP (page 3611);

State review standards for referred institutions (pages 3611–3613);

Procedures for the disapproval by the Secretary of State review standards (pages 3613–3614);

Procedures regarding SPRE reviews of referred institutions (page 3614);

Peer reviews of institutions (pages 3614–3615);

Procedures that a SPRE must follow to effect the termination of an institution's participation in the Title IV, HEA programs (page 3615); and

Due process requirements (page 3615).

In order to approve a postsecondary education institution to participate in the Title IV, HEA programs and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an education program beyond the secondary level in the State in which it is located. In addition, to participate in the Title IV, HEA programs, the institution must be certified by the Secretary as administratively capable and financially responsible. Thus, the HEA provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to Title IV, HEA programs is opened only to those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad."

While the concept of a triad of entities responsible for gatekeeping has had a long history, originating in 1952, the Higher Education Amendments of 1992, Pub. L. 102–325, significantly increased the gatekeeping responsibilities of each member of the triad. Specifically, Congress amended the HEA to provide for a new part H of Title IV entitled "Program Integrity Triad." Under the new part H, the requirements that accrediting bodies must meet if they are to be recognized by the Secretary as "gatekeepers" for Title IV are specified in detail. Part H also provides a new oversight responsibility for States: the State Postsecondary Review Program. Altogether, part H establishes a set of responsibilities for accrediting agencies, States, and the Secretary that creates a stronger and more coordinated evaluation of institutions that participate, or wish to participate, in the Title IV, HEA programs.

The Secretary recognizes that the approach to significantly increased gatekeeping activity outlined in the statute for the three members of the triad is a new one. This approach will require leadership in both implementation and evaluation if it is to achieve the effectiveness that Congress intended. The Secretary will take steps to assure that the various responsibilities of the triad members are carried out in a manner that, in fact, results in the identification of institutions that should not be eligible to participate in the Title IV, HEA programs, on the basis of either the quality of education they offer or their inability to handle program funds. At

the same time, the Secretary is committed to carrying out the responsibility for coordinating the activities of the triad members that are inherent in the statute in a manner that causes the least burden to institutions participating in the Title IV, HEA programs.

To these ends, the Secretary is committed to effective management of the gatekeeping function. The Secretary will review carefully the applications on accrediting bodies and the standards and operating plans proposed by State Postsecondary Review Entities (SPREs) under the State Postsecondary Review Program to insure that they meet the requirements of the statute and these regulations and will enable these triad agencies to fulfill their statutory purposes. The Secretary will also place a priority on the completion of the "Postsecondary Education Participation System," the Department's new integrated data base, which will contain the information that the Secretary generates in the course of the Secretary's oversight of institutions participating in Title IV, HEA programs. The Secretary will use the data base to inform accrediting bodies and SPREs of actions taken by the Secretary so that they may in turn carry out their responsibilities. This expanded data base is also critical to the Secretary's effective selection of institutions for program review.

Monitoring the results of the gatekeeping process is a very important key to effective management. The Secretary will evaluate the activities of accrediting agencies, SPREs, and the Department to determine their effectiveness in improving the integrity of institutions participating in Title IV programs and will take such steps as may be indicated to improve the results. Finally, as provided in the statute, the Secretary will seek the advice and counsel of the National Advisory Committee on Institutional Quality and Integrity in evaluating the effectiveness of the triad.

The Secretary believes that the approach best suited to achieving the objectives of the statute is a complementary one, with each member of the triad focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. States, in addition to providing the legal authority to operate within the state required for participation in the Title IV, HEA programs, will review institutions that meet certain statutory review criteria related to institutional performance in the Title IV, HEA programs. The focus of the Secretary's evaluation of institutions is on the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs.

While the functions and responsibilities of each of the triad members are generally different, the statute does require, in some instances, that all members of the triad evaluate similar areas. For the most part, the principle of complementary functions will lead to the members evaluating those same areas from different perspectives for different purposes. For example, all three of the triad members are required to examine the finances of an institution. If each looks at financial strength from a perspective complementary to that of the others, accrediting agencies would focus principally on the capacity of the institution to continue to offer programs at a level of quality sufficient to meet accrediting agency standards and to fulfill the institution's mission over a 5–10 year period of accreditation. The emphasis of a review by a SPRE would be on whether or not the institution possesses the full range of resources needed to serve students currently attending the institution. The Secretary's responsibilities focus on the institution's finance in light of its ability to provide the services described in its official publications and statements, to provide the administrative resources necessary to comply with its Title IV, HEA program responsibilities, and to meet all of its financial obligations, including, but not limited to, refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

Despite the Secretary's efforts to encourage complementary functions for each of the triad members, it is theoretically possible that, in some instances, an institution could be subject to three different standards regulating the same area of operation. For this reason, where a Title IV standard has been promulgated at the Federal level, the Secretary expects accrediting agencies and States to take this into account in establishing their own standards to insure that varying standards do not pose an unnecessary burden on institutions. It is also important that accrediting agencies and States not impose any standard that is weaker than a comparable Title IV, HEA program standard. The Secretary believes coordination of this is a federal responsibility.

In view of the complementary approach to the functions of the triad members, the Secretary believes, for example, that institutions should not have to develop different methodologies to provide data that the three members of the triad may require. The Secretary also believes that, to the extent feasible, any other requests for data about the institution, its students, or its graduates should rely on information already in the institution's possession. To that end, the Secretary expects accrediting agencies and States either to accept student data based on the methodology that will be specified in the regulations governing "Student Right to Know," also mandated by the Higher Education Amendments of 1992, or, where the institution may have other methodologies for calculating data, such as a system designed to provide data to a State higher education commission or other State agency, to accept data in the format already being used by the institution. Similarly, the Secretary expects accrediting agencies and SPREs to use the audited financial statements institutions are now required to provide to the Secretary on an annual basis to the extent those statements are compatible with the nature of the reviews conducted under their respective standards.

The Secretary also recognizes that other Federal agencies, such as the Department of Labor and the Veterans Administration, also regulate institutions in some areas that are similar to those included in part H. The suggestion has been made that the Secretary should promulgate Federal standards in the areas of overlap so that institutions would not be subject to varying standards developed by other Federal agencies and the triad members. However, the Secretary interprets part H as permitting States and accrediting agencies to establish their own standards, as opposed to using a Federal standard, and also believes that this is the most effective approach. In addition, it is not clear how the requirements of the different agencies are capatible with the requirements of part H. The purposes of these programs administered by other agencies may be very different. As a result, the Secretary has not pursued this alternative. The Secretary does believe that it would be useful to explore how the varying requirements of other Federal agencies that are similar to those of part H might be coordinated to reduce any burden on institutions and will initiate such exploration.

The Secretary believes that, where possible, data developed at the national level should be made available to institutions, as well as to States and accrediting agencies to assist them in carrying out their responsibilities under

part H. In particular, data concerning labor markets and compensation for specific fields and information concerning graduation and withdrawal rates at various types of institutions may be helpful to both triad members and institutions. The Secretary will facilitate the development of this type of information and, where possible under the auspices of the Department, will coordinate the development of data that will be helpful to institutions and the triad.

Finally, as part of the commitment to providing leadership to the triad, the Secretary will convene representatives of the triad members and institutions to exchange information about the gatekeeping process and to discuss how the triad is functioning, both in identifying institutions whose performance is questionable and in reporting requirements that have proven to be unreasonably burdensome. The Secretary invites comments concerning the functioning of the triad, as it is implemented through these and other regulations governed by part H. The Secretary will seek improvement, where possible, within existing regulations and will propose modifications to regulations and to the statute itself if experience indicates those changes are both necessary to achieve effective gatekeeping, with minimal burden, and compatible with the need to maintain, and assure the public of, the integrity of the Title IV, HEA programs.

The following is a summary of the significant changes from the NPRM:

Section 667.1 Scope and purpose. Section 667.1(a)(1) has been revised to clarify that the purpose of the SPRP is to reduce fraud and abuse in the Title IV, HEA programs. This section also has been revised to clarify that under the SPRP a State's standards apply only to referred institutions and a State may review only referred institutions under those standards.

Section 667.2 Definitions. The proposed definition of *professional program* has been revised to maintain a clear distinction between the terms *vocational program* and *professional program* in view of the changes made to the definition of *vocational program*. A professional program is therefore an undergraduate or graduate educational program that prepares individuals for an occupation, if that occupation (1) is listed in a Federal classification manual, (2) requires at least a bachelor's degree to qualify for entry; (3) involves the independent practice or application of a defined or organized body of competencies that is unique to the occupation; and (4) is formally recognized and regulated under a national or State licensure, accreditation, or permit system. Also, the definition is expanded to allow a SPRE to use its State's statutory definition of the term "professional program."

The proposed definition of *vocational program* has been revised to be consistent with that used in IPEDS. A vocational program is therefore defined as an educational program that is below the bachelor's level and is designed to prepare individuals with skills and training for employment in a specific trade, occupation, or profession related to that educational program.

Section 667.3 State agreement. Paragraph (b)(3) of this section has been revised to clarify the type of records that a SPRE must keep or have access to, and the type of information that must be provided to the Secretary. Thus, paragraph (b)(3)(iii) has been revised to indicate that a SPRE must keep or have access to records of referred institutions, related to activities under this part, and must provide requested information to the Secretary for financial or compliance audits of referred institutions. Paragraph (b)(3)(iv) has been added to indicate that the SPRE must keep or have access to records relating to its activities under this part, and must provide such information to the Secretary upon request when the Secretary evaluates the SPRE's performance under the SPRP.

Section 667.4 State postsecondary review entity. This section has been revised to make clear that the SPRP does not authorize a SPRE to (1) grant State authorization to provide postsecondary education to an institution, or (2) require nonreferred institutions to comply with the standards established under § 667.21.

Section 667.5 Criteria the Secretary uses to refer institutions to a SPRE for review. The criterion in paragraph (b)(11) of this section has been revised to limit complaints the Secretary considers in determining whether to refer an institution to a SPRE for review to student complaints. This section has also been revised to allow an institution an opportunity to challenge the accuracy of the information that the Department uses to refer the institution to a SPRE for review before the Department refers that institution to a SPRE.

Section 667.6 SPRE selection of institutions for review. This section has been revised to allow an institution that has not been referred by the Secretary an opportunity to challenge the accuracy of the information that a SPRE uses to select the institution for review.

Section 667.8 Notice to nationally recognized accrediting agencies of SPRE actions. A new section is added to these final regulations to require a SPRE to notify the appropriate nationally recognized accrediting agency before the SPRE conducts a review of an institution the agency accredits. The SPRE is also required to notify that accrediting agency of significant and relevant decisions, reports, or actions taken as a result of the review.

Section 667.21 State review standards. The standard requiring a State to evaluate whether the tuition and fees that are charged a student for an educational program are reasonable given the expected amount of money that the student can earn upon completion of the program is revised to apply only to vocational programs.

Section 667.23 SPRE reviews of referred institutions. Paragraph (d)(2) has been added to allow a SPRE, if an institution presents compelling evidence that its failure to satisfy a SPRE standard does not warrant further SPRE action, to forego any further action.

This section has been revised to require a SPRE to make available information regarding its priority system for selecting institutions to review.

Section 667.24 Peer reviews of institutions. This section has been revised to require a State to apply minimum, specified criteria to determine whether a peer review system other than a nationally recognized accrediting agency has demonstrated competence in assessing educational programs.

Section 667.26 Due process requirements. This section has been revised to require a State's due process procedures to specify a minimum time within which an institution may appeal an adverse action, and to designate an impartial hearing official to consider certain appeals by institutions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 1500 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified in the preamble to the NPRM under the heading

Paperwork Reduction Act of 1980.

Sections 667.3, 667.4, 667.8, 667.12, 667.15, 667.21, 667.22, and 667.26 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)). These regulations contain records that will affect States and State postsecondary review entities. An estimate of the total annual reporting and recordkeeping burden that will result from the collection of the information is 2000 hours per response for 57 respondents for a total burden of 114,000 burden hours for this package.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. Comments on this burden estimate should be submitted by May 31, 1994.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 667

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, States, Student aid.

(Catalog of Federal Domestic Assistance Number: 84.267, State Postsecondary Review Program)

Dated: April 20, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 667 to read as follows:

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

Subpart A—General

Sec.

Subpart B—Allotment Formula and Funding Procedures

Subpart C—State Review Standards, SPRE Reviews, and Termination of Institutional Participation

Authority: 20 U.S.C. 1099a through 1099a–3, unless otherwise noted.

Subpart A—General

§ 667.1 Scope and purpose.

(a)(1) This part establishes the rules and procedures that govern the State Postsecondary Review Program, which is authorized by title IV, part H, subpart 1 of the Higher Education Act of 1965, as amended (HEA). The purpose of the program is to reduce fraud and abuse in the title IV, HEA programs through development of State standards for, and State oversight and review under those standards of, institutions referred by the Secretary under § 667.5 or selected by a State postsecondary review entity under § 667.6.

(2) Under this part, if a State finds that an institution it reviews does not satisfy the State standards, the State may—

(i) Require the institution to take prompt actions to bring itself into compliance with the State's standards; or

(ii) Determine that the institution should no longer participate in a title IV, HEA program.

(b) A State must carry out activities under this part only to the extent that the costs of those activities will be reimbursed by Federal funds.

(c) As used in this part, "an institution" includes—

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(d)(1) The provisions in the Education Department General Administrative Regulations, 34 CFR parts 76 and 80, do not apply to this part except for the provisions in—

(i) 34 CFR 76.2, and 76.50 of subpart A;

(ii) 34 CFR 76.500 through 76.534, 76.560, 76.561, 76.563, and 76.580 through 76.592 of subpart F;

(iii) 34 CFR 76.701, 76.702, 76.703, 76.707, 76.720, 76.730, 76.731, 76.734, 76.760, and 76.761 of subpart G;

(iv) 34 CFR 80.22 of subpart A;

(v) 34 CFR 80.43 and 80.44 of subpart C; and

(vi) 34 CFR 80.50 through 80.52 of subpart D.

(2) For purposes of this part, the term "grantee," as defined and used in 34 CFR parts 76 and 80, refers only to a State Postsecondary Review Entity.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.2 Definitions.

(a) The following terms used in this part are defined in the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Branch campus
Educational program
Federal Family Education Loan (FFEL) programs
Nationally recognized accrediting agency
Recognized occupation
Regular student
Secretary
State

(b) The following terms used in this part are defined in the Student

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Assistance General Provisions regulations, 34 CFR part 668:

Award year
Clock hour
Eligible program
Enrolled
Federal Direct Student Loan Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal Stafford Loan Program Federal Supplemental Loans for Students (SLS) Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Federal Work-Study (FWS) Program
National Early Intervention Scholarship and Partnership (NEISP) Program
State Student Incentive Grant (SSIG) Program

(c) The following definitions apply to terms used in this part:

Classification of Instructional Programs (CIP): A manual published by the U.S. Department of Education, National Center for Education Statistics, that lists the codes, titles, and descriptions of educational programs used by institutions and States for reporting and analyzing education data at the national level. (This manual can be obtained at the United States Department of Education, Outreach Division, OERI, 55 New Jersey Ave., NW., room 300, Washington, DC 20208.)

Education and general expenditures: The total amount expended by an institution for institution for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

National Occupational Information Coordinating Committee (NOICC): An agency jointly sponsored by the U.S. Departments of Education and Labor to facilitate comparisons between educational programs and related occupations and to provide information to State employment counseling services.

NOICC Master Crosswalk: A computerized database that shows the relationships among major occupational and educational systems used by the Federal government. (This database can be obtained from the National Crosswalk Service Center, Iowa SOICC, 200 East Grand Ave., Des Moines, IA 50309. Telephone: (515) 242–4881.)

Professional program: An undergraduate or graduate educational program that—

(1)(i) Is listed in the CIP; and

(ii) Prepares individuals for an occupation, if that occupation—

(A) Requires at least a bachelor's degree to qualify for entry;

(B) Involves the independent practice or application of a defined or organized body of competencies that is unique to the occupation; and

(C) Is formally recognized and regulated under a national or State licensure, accreditation, or permit system; or

(2) Satisfies a State's statutory definition of the term *professional program*.

Referred institution: An institution that a SPRE reviews as a result of—

(1) A referral by the Secretary under § 667.5; or

(2) State selection under § 667.6.

State Postsecondary Review Entity (SPRE): The entity described in § 667.4.

Title IV, HEA program: One of the programs identified in 34 CFR 668.1.

Vocational program: An educational program, below the bachelor's level, designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.3 State agreement.

(a) To participate in the State Postsecondary Review Program, a State must enter into an agreement with the Secretary.

(b) In the agreement, the State—

(1) Designates a SPRE;

(2) Describes the organizational structure of the SPRE;

(3) Assures that the SPRE—

(i) Has the legal authority under State law to carry out the functions required of it under this part;

(ii) Will perform the functions required of it under this part;

(iii) Will keep records or have access to records of referred institutions that relate to activities under this part and will provide information to the Secretary as may be requested by the Secretary for financial and compliance audits of referred institutions;

(iv) Will keep records or have access to records that relate to its activities under this part, and will provide information to the Secretary as may be requested by the Secretary for program evaluations of the manner in which the SPRE carries out its responsibilities under this part; and

(v) Will review referred institutions on a schedule that coincides with the Secretary's schedule for recertifying those institutions to participate in the title IV, HEA programs;

(4) Describes the relationship between the SPRE, the State approving agency for Veterans Affairs, the State guaranty agency under the FFEL programs, the State agency responsible for administering the SSIG Program, any State entity that provides a license to institutions to operate in the State or otherwise legally authorizes institutions to provide postsecondary education in the State, any State-level entity that approves service providers under the Job Training Partnership Act, and any State-level entity that certifies vocational education;

(5) Indicates that the SPRE—

(i) Shall contract with a nationally recognized accrediting agency or a peer review system for purposes of § 667.24; and

(ii) May contract with a private agency, nationally recognized accrediting agency, or peer review system for assistance in performing the SPRE's functions; and

(6) Includes the SPRE's plan for performing the functions described in § 667.12.

(c) The agreement between the State and the Secretary goes into effect when it is signed by the Secretary and remains in effect until it is terminated by the Secretary or the State. The Secretary or the State terminates an agreement under the provisions of that agreement.

(d) The sanctions set forth in paragraph (e) of this section follow if the State—

(1) Does not enter into an agreement with the Secretary;

(2) Fails to comply with the terms of the agreement and the Secretary terminates that agreement;

(3) Terminates the agreement with the Secretary; or

(4)(i) Does not submit to the Secretary by December 31, 1995, State review standards under § 667.21, that are approvable by the Secretary under § 667.22, if the State received Fiscal Year 1993 funds to carry out activities under the State Postsecondary Review Program; or

(ii) Does not submit to the Secretary by December 31, 1996, State review standards under § 667.21, that are approvable by the Secretary under § 667.22, if the State did not receive Fiscal Year 1993 funds to carry out activities under the State Postsecondary Review Program.

(e) If any of the events listed in paragraph (d) of this section occurs—

(1) The State is ineligible to receive—

(i) Any funds appropriated to carry out this program;

(ii) Its allotment of any funds appropriated under the SSIG Program; and

(iii) Any funds appropriated to carry out the NEISP Program; and

(2) The Secretary—

(i) Does not designate as eligible for participation in a title IV, HEA program any institution in the State seeking initial participation in that program, any branch campus in the State for which an institution seeks an initial designation of eligibility under 34 CFR part 600, or any institution in the State that has undergone a change in ownership that results in a change in control as determined in 34 CFR part 600;

(ii) Grants only provisional certification, as determined in 34 CFR part 668, to an institution or a branch campus in that State not described in paragraph (e)(2)(i) of this section; and

(iii) May—

(A) Establish the review standards for that State described in § 667.21; and

(B) Carry out, or arrange to carry out, the State's other responsibilities and requirements under this part.

(Authority: 20 U.S.C. 1099a–1)

§ 667.4 State postsecondary review entity.

(a) The SPRE is the entity designated by the State in the agreement between the State and the Secretary under § 667.3, to—

(1) Represent all existing State entities that are, and all future State entities that will be, responsible for—

(i) Granting State authorization to provide postsecondary education in that State; and

(ii) Ensuring that all institutions in the State that participate in a title IV, HEA program remain in compliance with the State review standards established under § 667.21;

(2) Keep records or have access to records of referred institutions that relate to activities under this part and provide information to the Secretary as may be requested by the Secretary for financial and compliance audits of referred institutions; and

(3) Keep records or have access to records that relate to its activities under this part, and provide information to the Secretary as may be requested by the Secretary for program evaluations of the manner in which the SPRF carries out its responsibilities under this part.

(b) Under this part, a SPRE is not authorized to—

(1) Grant State authorization to provide postsecondary education in that State; or

(2) Require an institution in the State that is not referred to the State by the Secretary under § 667.5 or selected by the State under § 667.6 to comply with State review standards established under § 667.21.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.5 Criteria the Secretary uses to refer institutions to a SPRE for review.

(a)(1) The Secretary refers an institution that participates in a title IV, HEA program to a SPRE for review if the institution meets one or more of the criteria contained in paragraph (b) of this section.

(2) In determining whether an institution meets one or more of the criteria contained in paragraph (b) of this section, the Secretary uses the most recently available data.

(b) Except as provided in paragraph (c) of this section, the Secretary refers an institution to a SPRE if—

(1) The institution has a cohort default rate (defined in 34 CFR 668.17) equal to or greater than 25 percent;

(2)(i) The institution has a cohort default rate (defined in 34 CFR 668.17) equal to or greater than 20 percent; and

(ii) During the latest completed award year for which data are available—

(A) More than two-thirds of the institution's regular undergraduate students who were enrolled as at least half-time students received assistance under any title IV, HEA program, excluding assistance received from the SSIG, NEISP, and Federal PLUS programs; or

(B) The amount that the institution's students received under the title IV, HEA programs, excluding funds from the SSIG, NEISP, and Federal PLUS programs, is equal to or greater than two-thirds of the institution's education and general expenditures;

(3) The amount that the institution's students received under the Federal Pell Grant Program is equal to or greater than two-thirds of the institution's education and general expenditures;

(4) The Secretary initiated a limitation, suspension, or termination action against the institution under 34 CFR part 668, subpart G, within the preceding 5 years;

(5) An audit finding in the institution's 2 most recent audits under 34 CFR 668.23 resulted in a required repayment by the institution of an amount greater than 5 percent of the funds the institution received under the title IV, HEA programs for any 1 award year covered by those audits;

(6) The Secretary cited the institution for its failure to submit an acceptable audit report by the deadlines established under 34 CFR 668.23;

(7)(i) The amount that the institution's students received under the Federal Pell Grant Program during any award year differed by more than 25 percent from the amount that the institution's students received under that program in the preceding award year, unless the differences can be accounted for by changes in that program;

(ii) The amount that the institution's students received under the Federal Stafford Loan Program during any award year differs by more than 25 percent from the amount that the institution's students received under that program in the preceding award year, unless the differences can be accounted for by changes in that program; or

(iii) The amount that the institution's students received under the Federal SLS Program during any award year differs by more than 25 percent from the amount that the institution's students received under that program in the preceding award year, unless the differences can be accounted for by changes in that program;

(8) The institution failed to meet the factors of financial responsibility in 34 CFR part 668, subpart B;

(9) The institution underwent a change in ownership that resulted in a change of control as defined in 34 CFR 600.31;

(10) Except with regard to any public institution affiliated with a State system of higher education, the institution has participated for less than 5 years in—

(i) The Federal Pell Grant Program;

(ii) The FFEL Program;

(iii) The FSEOG Program;

(iv) The FWS Program;

(v) The Federal Perkins Loan Program; or

(11) The institution has been subject to a pattern of complaints from students related to its management or conduct of the title IV, HEA programs or to misleading or inappropriate advertising and promotion of the institution's educational programs that, in the Secretary's judgment, based on information available to the Secretary, including information provided to the Secretary by the SPRE, is sufficient to warrant review.

(c)(1) Before the Secretary refers an institution to a SPRE for meeting one or more of the referral criteria contained in paragraph (b) of this section, the Secretary notifies the institution of that intended referral and the reasons for the referral.

(2) The Secretary delays the referral if the Secretary receives from the institution a notice of its intent to challenge the accuracy of the information upon which the referral was based no later than seven days after the institution receives the notice from the Secretary.

(3)(i) If an institution challenges the accuracy of the information on which its referral was based, the institution has

the burden of proving that the information was inaccurate.

(ii) For purposes of paragraph (c)(3)(i) of this section, the Secretary presumes that records maintained in the normal course of business by the U.S. Department of Education, a guaranty agency under the FFEL Program, a SPRE, a State licensing agency, or another State agency are accurate.

(4)(i) If an institution challenges the accuracy of the information on which its referral was based, other than the accuracy of its cohort default rate for a particular year, the Secretary must receive the institution's submission, along with any supporting document or record, no later than 30 days after the institution receives the notice described in paragraph (c)(1) of this section.

(ii) If an institution challenges the accuracy of its cohort default rate for a particular year under 34 CFR 668.17(d)(1)(i) (A) and (B), it must file a timely appeal of that rate under those provisions.

(d) If the institution timely challenges its referral under paragraph (c) of this section, the Secretary refers the institution to a SPRE for review unless the institution convinces the Secretary that its referral was based upon inaccurate information for all of the referral criteria.

(e)(1) Documents referenced in this section may be hand-delivered or mailed. If documents are mailed, they must be mailed certified mail, return receipt requested, or by next-day mail service.

(2) If documents are mailed, proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card), or the pickup date indicated on the next day mail service's bill.

(3) For purposes of paragraph (e)(2) of this section, if any submission is sent by next-day mail service, the Secretary presumes that the document was delivered the day after the date on which it was picked up for delivery.

(Authority: 20 U.S.C. 1099a–3)

§ 667.6 SPRE selection of institutions for review.

(a) A SPRE may review an institution under this part that was not referred by the Secretary if—

(1) The SPRE—

(i)(A) Determines that the institution meets a referral criterion in § 667.5 based on more recent data available to the SPRE; or

(B) Has reason to believe the institution is engaged in fraudulent practices; and

(ii) Requests the Secretary to approve its review of that institution; and

(2) The Secretary—

(i) Approves that request; or

(ii) Does not respond to the SPRE's request within 21 days after the date the Secretary receives that request; and

(b) If, under paragraph (a)(1)(i)(A) of this section, a State selects an institution for review, before the SPRE may request the Secretary to approve that review, the SPRE must—

(1) Notify the institution of the selection and provide the institution with the reasons for its selection;

(2) Delay its review request to the Secretary if the State receives a notice from the institution no later than seven days after the institution receives the notice from the State challenging the accuracy of the information on which the selection was based.

(3)(i) If an institution challenges the accuracy of the information on which its selection was based, the institution has the burden of proving that the information was inaccurate.

(ii) For purposes of paragraph (c)(3)(i) of this section, the State shall presume that records maintained in the normal course of business by the U.S. Department of Education, a guaranty agency under the FFEL programs, a SPRE, a State licensing agency, or another State agency are accurate.

(4) To challenge the accuracy of the information on which its referral was based, the State must receive no later than 30 days after the institution receives the notice described in paragraph (c)(1) of this section the institution's submission, along with any supporting document or record.

(c) If the institution timely challenges its referral under paragraph (b) of this section, the State requests a review of the institution from the Secretary unless the institution convinces the State that its selection was based upon inaccurate information.

(d)(1) Documents referenced in this section may be hand-delivered or mailed. If documents are mailed, they must be mailed certified mail, return receipt requested, or by next-day mail service.

(2) If documents are mailed, proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card), or the pick up date indicated on the next day mail service's bill.

(3) For purposes of paragraph (e)(2) of this section, if any submission is sent by next-day mail service, the State shall presume that the document was delivered the day after the date on which it was picked up for delivery.

(Authority: 20 U.S.C. 1099a–3)

§ 667.7 Notice to SPRE and nationally recognized accrediting agency of Federal actions.

(a)(1) If the Secretary takes an action against an institution, the Secretary notifies the SPRE of the State in which the institution is located, and the appropriate nationally recognized accrediting agency, within 10 days of taking that action.

(2) For purposes of this part, an action taken by the Secretary includes, but is not limited to, the actions described in 34 CFR part 668, subpart G.

(b) If the Secretary is informed that another Federal agency is taking an action against an institution, the Secretary notifies the SPRE of the State in which the institution is located, and the appropriate nationally recognized accrediting agency, as soon as possible but not later than 10 days after learning of that action.

(Authority: 20 U.S.C. 1099a–3)

§ 667.8 Notice to nationally recognized accrediting agency of SPRE actions.

(a) A SPRE shall notify a nationally recognized accrediting agency when it plans to conduct a review of an institution accredited or preaccredited by that agency; and

(b) After conducting a review of the institution, the SPRE shall notify the accrediting agency of its findings and the actions the SPRE takes, or plans to take, as a result of those findings.

(Authority: 20 U.S.C. 1099a–3)

§ 667.9 Institutions with locations in more than one State.

(a) If an institution that is subject to a referral has locations in more than one State, the Secretary refers the institution to the SPRE in each State in which the institution is located and informs each SPRE of the other States in which the institution is located.

(b) The SPRE of the State in which the main campus of the institution is located has the principal responsibility for reviewing that institution.

(c) If a branch campus or additional location of an institution is in a State other than the State in which the institution's main campus is located, the SPRE of the State in which that branch campus or additional location is located—

(1) May review that branch campus or additional location before a SPRE review is conducted of the main campus of that institution;

(2) May delay its review of that branch campus or additional location until a SPRE review is conducted of the main campus of that institution; or

(3) May choose not to review that branch campus or additional location if—

(i) The SPRE of the State in which the main campus of that institution is located reviews that institution and makes no significant findings; and

(ii) The allotment of the State in which the branch campus or additional location is located is insufficient to allow the SPRE to review all referred institutions.

(d) An institution and its branch campuses and additional locations are subject to the review standards of the State in which they are located, respectively.

(e) Notwithstanding paragraphs (b) and (c) of this section, to review a referred institution that has locations in more than one State, the SPREs of those States may enter into an agreement under which the SPREs may alter the review responsibilities set forth in paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1099a–3)

Subpart B—Allotment Formula and Funding Procedures

§ 667.11 Allotment formula.

(a) For each fiscal year for which funds are appropriated to carry out this part, the Secretary—

(1) Allots $30,000 to Guam, $30,000 to American Samoa, $30,000 to the Northern Mariana Islands, $30,000 to the Virgin Islands, and $30,000 to the Trust Territory of the Pacific Islands;

(2) Calculates each remaining State's allotment of the remaining funds under paragraph (b)(2) of this section; and

(3) Notifies each State of its allotment.

(b) Except for the funds allotted under paragraph (a)(1) of this section to Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, the Secretary allots to a State those remaining funds appropriated to carry out this part by—

(1) Determining the percentage of institutions participating in a title IV, HEA program that are in each State by dividing the number of institutions located in that State that are certified to participate in a title IV, HEA program by the total number of institutions that are certified to participate in all States;

(2) For the latest award year for which information is available, determining the percentage of title IV, HEA program funds by dividing the total amount of title IV, HEA program funds that were made available to students who enrolled in the institutions in that State that participate in a title IV, HEA program, or to those students' parents, by the total amount of title IV, HEA program funds that were made available to students, or to those student's parents, who enrolled in institutions that participate in a title IV, HEA program in all States;

(3) Averaging the two percentages determined in paragraph (b) (1) and (2) of this section;

(4) Calculating an "initial distribution" by multiplying the average percentage determined in paragraph (b)(3) of this section by the amount appropriated to carry out this part, less the total amount allotted to Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(5)(i) Determining which States receive less than $75,000 under the initial distribution;

(ii) Providing each of those States with $75,000; and

(iii) Calculating the difference between the $75,000 provided to each of those States and those States' initial distribution;

(6)(i) Determining which States receive more than $75,000 under the initial distribution; and

(ii) Calculating the difference between each of those States' initial distribution and $75,000;

(7) Calculating a "reduction percentage" by dividing the total amount obtained in paragraph (b)(5)(iii) of this section by the total amount obtained in paragraph (b)(6)(ii) of this section; and

(8) Reducing the initial distribution of each State in paragraph (b)(6)(i) of this section by the product of the amount obtained in paragraph (b)(6)(ii) of this section and the reduction percentage in paragraph (b)(7) of this section.

(c) If the Secretary determines that a SPRE will not spend its entire allotment during the period for which those funds are made available, or if a SPRE does not spend its allotment by the end of the period for which those funds are made available, the Secretary reallots those funds to other SPREs—

(1) For unanticipated and extraordinary legal expenses; or

(2) In a manner the Secretary determines best carries out the purposes of the State Postsecondary Review Program.

(d) Federal and State matching funds under the SSIG and NEISP programs are excluded from the calculations in this section.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.12 Application for funds.

(a)(1) *General*. For each fiscal year for which funds are appropriated to carry out this part, a State that has entered into an agreement with the Secretary under § 667.3 shall apply to the Secretary to receive its allotment. The State's application must contain the information required in paragraph (b), (c), or (d) of this section, as appropriate. The Secretary publishes in the Federal Register the date by which a State must submit its application.

(2) *Established review standards*. A State has established review standards if those standards met the requirements in § 667.21 and the Secretary did not disapprove those standards under § 667.22.

(b) *Application before standards are established*. (1) If a State has not established review standards, to receive its allotment, the State—

(i) Must submit a plan to develop—

(A) The review standards described in § 667.21, in consultation with the institutions in that State. The plan must describe the manner in which consultation will take place; and

(B) The procedures for receiving and responding to complaints from students, faculty, and others regarding institutions in the State, in consultation with institutions in that State. The plan must describe the manner in which consultation will take place;

(ii) May submit a plan to—

(A) Identify information maintained by institutions and State agencies, other than the information institutions are required to maintain under the Student Right-to-Know and Campus Security Act, that is relevant to developing the State review standards;

(B) Identify systems in which the information described in paragraph (b)(1)(ii)(A) of this section is maintained; and

(C) Provide estimates of the costs of coordinating the institutions' and State's information systems with an information system developed by the SPRE; and

(iii) Must submit a budget for developing the standards and the complaint procedures and, if relevant, for providing cost estimates for the SPRE's information system. The budget cannot exceed the State's allotment.

(2) If the State's allotment is less than the State's anticipated cost of carrying out the activities described in paragraph (b)(1) (i) and (ii) of this section, the State shall first use its allotment to develop the review standards. If a portion of the allotment remains after the State develops its review standards, the State may develop procedures for receiving and responding to complaints from students, faculty, and others regarding institutions in the State. The State may use any remaining portion of its allotment to provide cost estimates for the SPRE's information system only after it has completed developing its

review standards and complaint procedures.

(c) *Application after standards are established.* (1) If the Secretary has not disapproved the State's review standards under § 667.22, to receive its allotment, the State must submit to the Secretary—

(i) Its plan to review referred institutions; and

(ii) A budget for those reviews that does not exceed the State's allotment calculated under § 667.11, less any amount expended by the SPRE in carrying out the activities under paragraph (b) of this section.

(2)(i) If a SPRE anticipates that the cost of reviewing all the referred institutions will exceed the State's allotment, the SPRE shall, as part of its plan, submit a priority system for selecting institutions to review from among the referred institutions; and

(ii) The SPRE shall have discretion in developing its priority system, except that the SPRE must make its top priority for review, referred institutions that the Secretary has scheduled for recertification under 34 CFR part 668, subpart B.

(iii) A SPRE may establish the lowest reveiw priority for an institution if—

(A) The institution is referred to the SPRE for a reason described in § 667.5(b)(6) concerning the timely submission of an audit report or § 667.5(b)(9) concerning a change of ownership that results in a change of control; and

(B) The SPRE previously conducted a review of the institution as a result of a referral for the same reason in § 667.5(b)(6) or (b)(9), respectively, and found no significant violations of the State's standards.

(d) *Timely submission.* A State may submit to the Secretary the information required in paragraph (c) of this section at the same time that it submits to the Secretary the information and documentation required under paragraph (b) of this section.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.13 Approval of funding application.

(a) *Before standards are established.* The Secretary approves a State's plan and budget submitted before the State establishes review standards if—

(1) The plan provides a reasonable basis, and adequate budget justification, for carrying out the activities described in § 667.12(b)(1);

(2) If applicable, the plan includes a priority system for using the State's allotment as described in § 667.12(b)(2); and

(3) The budget includes only reasonable allowable costs within the State's allotment.

(b) *After standards are established.* After the State establishes review standards, the Secretary approves a State's plan and budget for the allowable activities described in § 667.14 if—

(1) The plan provides adequate budget justification for those activities;

(2) The plan provides for a reasonable scheme for reviewing referred institutions;

(3) The plan includes a priority system for review of institutions as described in § 667.12(c)(2);

(4) The proposed contracts with private agencies, nationally recognized accrediting agencies, or peer review systems to carry out SPRE functions included in the plan are reasonable and appropriate; and

(5) The budget includes only reasonable allowable costs within the State's allotment.

(c) *Failure to submit an acceptable application.* If a State does not submit an application for funds under § 667.12 or its application is not approved under this section—

(1) The State is ineligible to receive—

(i) Any funds appropriated to carry out this program;

(ii) Its allotment of any funds appropriated under the SSIG Program; and

(iii) Any funds appropriated to carry out the NEISP Program; and

(2) The Secretary—

(i) Does not designate as eligible for participation in a title IV, HEA program any institution located in that State seeking initial participation in that program, any branch campus located in that State for which an institution seeks an initial designation of eligibility under 34 CFR part 600, or any institution located in that State that has undergone a change in ownership that results in a change in control as determined in 34 CFR part 600; and

(ii) Grants only provisional certification, as determined in 34 CFR part 668, to an institution in that State not described in paragraph (c)(2)(i) of this section.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.14 Allowable costs and activities.

(a) If included in a State's approved plan, the Secretary pays, by reimbursement, direct costs as described in paragraph (c) of this section and in Office of Management and Budget (OMB) Circular A–87, and indirect costs as determined in paragraph (b) of this section, of—

(1) Establishing State review standards in consultation with institutions in the State, publicizing the State review standards, and providing initial and continuing training to State and other personnel in the State, including personnel at the institution subject to review;

(2) Establishing and implementing, in consultation with institutions in that State, the procedures for receiving and responding to complaints from students, faculty, and others regarding institutions in the State;

(3) Reviewing referred institutions; and

(4) Developing and maintaining an information system for SPRE review activities.

(b) If a State seeks reimbursement for indirect costs, the State shall—

(1) Use the restricted indirect cost rate, computed under 34 CFR 75.564 and approved by the Secretary under 34 CFR 75.561; and

(2) Not charge as a direct cost any cost that qualifies as an indirect cost.

(c) The direct costs of carrying out the activities described in paragraph (a) of this section include, but are not limited to—

(1) The salary of State employees engaged in allowable activities;

(2) Travel costs incurred—

(i) Consulting with institutions in developing standards and complaint procedures; and

(ii) Reviewing referred institutions;

(3) Training for—

(i) State employees to perform reviews of referred institutions; and

(ii) Institutional and other personnel regarding the State review standards;

(4) Contracting with private organizations, nationally recognized accrediting agencies, and peer review systems to carry out required activities;

(5) Costs incurred by the State for administrative actions and legal proceedings; and

(6) Costs incurred by the SPRE in that State in sharing information with other SPREs, the Secretary, other State agencies, nationally recognized accrediting agencies, institutions, private organizations, and others.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.15 Fiscal procedures and records.

(a) A state must account for the funds it receives under this part in accordance with the procedures it uses to account for the expenditure of its own funds and must keep fiscal and accounting records that support, on audit, its expenditure of funds under this part.

(b)(1) Except as provided in paragraph (b)(2) of this section, the State must keep intact and accessible records

relating to its activities under this part for five years after the end of the period for which funds were provided.

(2) The State shall keep records on any claim or expenditure questioned on audit until any audit question is resolved.

(c) A State must have an audit performed of the SPRE's activities under this part at least once every two years and must submit the report of that audit to the Secretary. An audit conducted under the Single Audit Act satisfies this requirement.

(Authority: 20 U.S.C. 1099a–1099a–3)

§ 667.16 Supplement, not supplant, requirement.

The Secretary reimburses a State for the costs of necessary SPRE activities which supplement, but do not supplant, existing licensing or review functions conducted by the State.

(Authority: 20 U.S.C. 1099a–2)

Subpart C—State Review Standards, SPRE Reviews, and Termination of Institutional Participation

§ 667.21 State review standards.

(a) Each State participating under this part must develop standards, in consultation with institutions in the State, under which the SPRE reviews referred institutions. The State-developed review standards must evaluate, with regard to a referred institution—

(1) The extent to which the institution makes available to its students and prospective students its catalogs, admission requirements, course outlines, tuition-and-fee schedules, refund policy, course cancellation policy, rules and regulations, and enrollment agreement, if appropriate;

(2) Whether the institution's descriptions of its courses and educational programs are accurate;

(3) Whether the institution has a method to assess that a student has the ability to complete successfully the educational program for which he or she applies;

(4) Whether the institution maintains and enforces standards relating to satisfactory academic progress;

(5) Whether the institution maintains adequate student and other records;

(6) Whether the institution complies with relevant safety, and health standards, such as fire, building, and sanitation codes;

(7) The extent to which the institution's financial and administrative capacity is appropriate to its scale of operations, and whether the institution maintains adequate financial and other information to determine the adequacy of its financial and administrative capacity;

(8) For an institution that the SPRE determines is at financial risk, the adequacy of the institution's plans to provide for, if the institution closes—

(i) Instruction to enrolled students; and

(ii) Retention of and access to academic and financial aid records;

(9) If an institution provides a vocational program—

(i) Whether the tuition and fees charged for that vocational program are excessive given the amount of money that a student who successfully completes the program may reasonably be expected to earn; and

(ii) Whether the vocational program provides students with quality training that leads to useful employment in an occupation recognized in that State. In making this evaluation, one of the factors the SPRE shall consider is the appropriateness of the length of the vocational program in terms of both the number of days of instruction and the number of credit or clock hours the program offers;

(10) The extent to which the institution provides to its students relevant information regarding—

(i) Market and job availability for students in its occupational, professional, and vocational programs; and

(ii) The relationship between the institution's educational programs and State licensing standards for specific occupations;

(11) The appropriateness of the number of semester, trimester, or quarter credit or clock hours required for the completion of an educational program;

(12) The appropriateness of the length of 600-clock-hour educational programs;

(13) Whether, and the extent to which, the actions of any owner or shareholder of the institution, or any person exercising control over the institution may adversely affect its participation in a title IV, HEA program;

(14) The extent to which the institution's procedures for investigating and resolving student complaints are adequate;

(15) The extent to which the institution's advertising promotion, and student recruiting practices are appropriate;

(16) Whether the institution has a fair and equitable refund policy; and

(17) The extent to which the institution's educational programs are successful as measured by—

(i) The completion and graduation rates of the students enrolled in those programs, taking into account the length of the programs and the selectivity of the institution's admission policy (for the purpose of this provision, a completion rate is the same as a graduation rate);

(ii) The institution's withdrawal rate;

(iii) With respect to the institution's vocational and professional programs, the placement rate of the institution's graduates in occupations related to their educational programs, with related programs and occupations determined by reference to the *NOICC Master Crosswalk*;

(iv) Where appropriate, the rate at which the institution's graduates pass licensure examinations; and

(v) The success of the institution's students who express other completion goals, such as transferring to another institution, obtaining full-time employment in their field of study, or qualifying for military service, in meeting those goals.

(b) In developing the review standards in paragraph (a) of this section, a State—

(1) May establish different standards for different types or categories of institutions or educational programs;

(2)(i) Shall specify the records and information that a referred institution would need to maintain to demonstrate to a SPRE the institution's compliance with those standards; and

(ii) If a referred institution was not, before the institution was referred, otherwise required to keep records relating to its compliance with State review standards, and did not keep those records, must allow the institution a reasonable period of time to obtain those records to enable the institution to demonstrate its compliance with the State standards;

(3) Except for standards regarding prospective students in paragraph (a)(1) of this section, shall establish standards that apply at least to all regular students;

(4) Shall quantify the standards described in paragraph (a)(9)(i) and (a)(17)(i), (ii), (iii), and (iv) of this section by establishing—

(i) Criteria under which a SPRE determines if the tuition and fees charged by an institution for a vocational program are excessive compared to the amount of money that a student who successfully completes that program may reasonably be expected to earn;

(ii) Acceptable completion and graduation rates of students enrolled in educational programs offered by an institution;

(iii) An acceptable withdrawal rate of students at an institution;

(iv) With respect to an institution's vocational and professional programs,

an acceptable placement rate of the institution's graduates in occupations related to their educational programs; and

(v) An acceptable rate or rates at which the institution's graduates pass licensure examinations; and

(5) Shall determine the extent to which it is appropriate to base a State review standard on a related title IV, HEA program standard or requirement or establish as the State's review standard the comparable title IV, HEA program standard or requirement.

(Authority: 20 U.S.C. 1099a–3)

§ 667.22 Disapproval of State review standards.

(a)(1) Each State shall submit to the Secretary for evaluation the review standards that the State developed under § 667.21.

(2) The State shall also submit to the Secretary an explanation of how each standard was established, including—

(i) An explanation of the relationship between each of the State's review standards and the related or comparable title IV, HEA standards and requirements;

(ii) If applicable, an explanation of the reasons for establishing different review standards for different types of institutions or educational programs; and

(iii) A description of the manner in which institutions were consulted in developing the review standards.

(b) The Secretary disapproves a State's review standards if—

(1) The State does not comply with, or provide adequate information regarding, the provisions in paragraph (a) of this section;

(2) The State does not assure the Secretary that the State's review standards are consistent with the laws and constitution of that State;

(3) The State does not submit evidence that the State's review standards were developed in consultation with the institutions in that State;

(4) The State's review standards do not meet or exceed all of the requirements and cover all the areas described in § 667.21; or

(5) The standards developed under § 667.21(b)(4)—

(i) Do not specify the methods and procedures that an institution must use to calculate the graduation or completion rates, withdrawal rate, placement rates, and licensure examination pass rates of the institution's students or graduates;

(ii) Do not specify statistically valid methods and procedures that an institution must use if that institution conducts surveys of its graduates to obtain data regarding the type of employment and placement of the institution's graduates; and

(iii) Do not specify the methods and data, and the source of that data, that a SPRE uses to determine if the tuition and fees charged by an institution for a vocational program are excessive compared to the amount of money that a student who successfully completes that program may reasonably be expected to earn.

(c) If the Secretary disapproves a State's review standards, the Secretary gives the State the reasons for that disapproval and gives the State an opportunity to—

(1) Demonstrate why the Secretary's disapproval was incorrect; or

(2) Submit revised review standards that address the reasons for the Secretary's disapproval.

(Authority: 20 U.S.C. 1099a–3)

§ 667.23 SPRE reviews of referred institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, if the Secretary refers an institution to a SPRE for review under § 667.5 or the SPRE selects an institution for review under § 667.6, the SPRE reviews, or arranges for the review of that institution, to determine whether the institution is in compliance with the State review standards described in § 667.21.

(2) The Secretary may determine that a SPRE need not review an institution that is referred only because it meets the conditions of § 667.5(b)(10) if the SPRE previously conducted a review of that institution and found no violations of the State's standards.

(b)(1) The SPRE shall provide written notice to all institutions in the State that participate in a title IV, HEA program of the review standards approved by the Secretary under § 667.22 before it may conduct reviews of referred institutions.

(2) Each year the SPRE shall make available information regarding its review priority system after its plan is approved by the Secretary under § 667.13 and before conducting reviews of referred institutions under that plan and priority system.

(c) After a SPRE completes its review of a referred institution, the SPRE must issue an initial report of the SPRE's findings and provide it to the institution no later than 45 days after the SPRE completes its review. If the SPRE finds that the institution is in violation of a standard, for each finding, the SPRE must—

(1)(i) Cite the standard violated and the nature of the violation; and

(ii) Except as provided in paragraph (d)(2) of this section, prescribe a course of action the institution must follow to correct the violation. The SPRE has sole discretion to determine an appropriate period for the institution to correct the violation and bring itself into compliance with the State's review standards; or

(2) Initiate a proceeding under § 667.25 to affect the termination of the institution's participation in the title IV, HEA programs.

(d)(1) The SPRE must give the institution an opportunity to respond to its findings and required actions; and

(2) The SPRE may determine, based on compelling evidence provided by the institution, that the institution's failure to satisfy a State standard does not warrant any further action by the SPRE.

(e) If the institution chooses to respond to the SPRE's report within the time permitted by the SPRE, the SPRE must evaluate the institution's response and issue a final report to the institution that includes its findings and required action.

(f)(1)(i) The SPRE must provide to the Secretary a copy of its final report to an institution within 30 days of its issuance to the institution; or

(ii) If the institution did not respond to the SPRE's initial report by the date permitted by the SPRE, the SPRE must provide to the Secretary a copy of its initial report. The SPRE's initial report becomes its final report on the day after the date provided to the institution for responding to that report; and

(2) If the SPRE did not prescribe a course of action the institution must follow to correct a violation of the State's standards under paragraph (d)(2) of this section, the SPRE must include in its report to the Secretary an explanation of why no action was prescribed.

(g) In addition to the reasons for initiating a proceeding to effect the termination an institution's participation in a title IV, HEA program under paragraph (c) of this section, the SPRE may determine that the institution should no longer participate in that title IV, HEA program if that institution—

(1) Does not respond to the SPRE's findings or comply with the SPRE's required actions within the time permitted by the SPRE, and the SPRE's findings show violations of the State's standards;

(2) Does not allow SPRE personnel at the institution; or

(3) Fails to provide SPRE officials with prompt access to its documents and records.

(Authority: 20 U.S.C. 1099a–3)

§ 667.24 Peer reviews of institutions.

(a)(1) To carry out a review of a referred institution, the SPRE must contract with a nationally recognized accrediting agency or other peer review system the SPRE determines demonstrates competence in assessing educational programs.

(2) In determining whether a peer review system is competent in assessing educational programs, the SPRE must, at a minimum, determine that the system has—

(i) An established basis for evaluating educational quality;

(ii) Review procedures that include the selection of peer reviewers who have experience in evaluating the types of programs offered by the institution; and

(iii) Established policies and procedures that guard against bias in conducting reviews of institutions.

(b)(1) Under the contract described in paragraph (a) of this section, the nationally recognized accrediting agency or peer review system shall carry out a review or provide information from its previous grant of accreditation or preaccreditation or previous review to the SPRE regarding the agency's or system's assessment of the quality and content of the institution's educational programs in relation to achieving the stated objectives for which the programs were offered.

(2) In making its assessment under paragraph (b)(1) of this section, for each educational program, the agency or system shall take into account the adequacy of the space, equipment, instructional materials, staff, and student support services, including student orientation and counseling provided for each program, and any other areas specified in the agency's contract with the SPRE.

(Authority: 20 U.S.C. 1099a–3)

§ 667.25 Termination of an institution's participation in the title IV, HEA programs.

(a)(1) If a SPRE determines that a referred institution should no longer participate in a title IV, HEA program, based upon its review, because the institution is in violation of State standards, or based upon a report or review of that institution by a nationally recognized accrediting agency or peer review system under § 667.24, or has not complied with the SPRE requirements such as those listed in § 667.23(g), the SPRE must provide the institution with the opportunity to contest that determination in accordance with procedures the Secretary has approved for that purpose under § 667 26.

(2) If the SPRE still concludes, after affording the institution the opportunity to challenge the SPRE's initial determination under paragraph (a)(1) of this section, that the institution should no longer continue to participate in a title IV, HEA program, the SPRE notifies the Secretary of those findings and that determination.

(b)(1) Upon notice by the SPRE that the institution should no longer participate in a title IV, HEA program, the Secretary immediately terminates that institution's participation in that program and notifies the institution, the SPRE, and the appropriate accrediting agency of the effective date of that termination.

(2) If an institution's participation in a title IV, HEA program is terminated under this section—

(i) The institution may not appeal that termination to the Secretary; and

(ii) The institution may not reapply to the Secretary to participate in that program until 18 months have expired from the effective date of its termination.

(Authority: 20 U.S.C. 1099a–3)

§ 667.26 Due process requirements.

(a) Each State shall submit to the Secretary for approval the procedures it uses to allow an institution to challenge a SPRE's finding that the institution is in violation of the State's review standards and should no longer continue to participate in a title IV, HEA program.

(b) The Secretary approves a States' procedures described in paragraph (a) of this section if—

(1) The State review standards are in writing; and

(2) The procedures require the SPRE to—

(i) Notify an institution of any required action and the bases for that action;

(ii) Permit the institution the opportunity to challenge that adverse action before an impartial official designated by the State for this purpose, in writing or in a hearing, within a specified time;

(iii) Notify the institution in writing of the result of its challenge, and the basis for that result; and

(iv) Follow other applicable procedural requirements of State law.

(Authority: 20 U.S.C. 1099a–3)

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

General Comments

The Secretary received numerous comments about the overall impact of the proposed regulations. In general, commenters opposed to the proposed reguations believed that the NPRM did not achieve the coordinated balance of responsibilities among the triad members that it sought to achieve, and that it provided for extensive and duplicative data collection and reporting requirements that created a costly and unnecessary burden on the entire higher education community. Further, they believed that the regulations did not regulate "narrowly to the law," as they purported to do. In general, these commenters suggested that the Secretary should review each requirement in the proposed regulations to determine if it was required by the statute and should further ensure that all requirements that meet this test and are included in the final regulations are implemented in the most reasonable and cost effective manner. This, they believed, would ensure the Department's compliance with Executive Order 12866.

Specifically, many commenters were concerned that:

(1) The proposed regulations will force institutions to engage in excessive and duplicative information gathering and reporting, at considerable cost, with no net increase in the quantity or quality of information available to the public, and will result in the diversion of institutions' already scarce resources away from their primary mission of providing a quality education; and

(2) The proposed regulations threaten the diversity of American higher education and fail to focus oversight properly on vocational institutions.

In addition, the Secretary received suggestions from several commenters that the Department should strongly encourage all triad members to work together and adopt the same or similar language for the various standards, should collect the necessary data through a common source such as readily available public information or IPEDS, and should use common methodologies for various calculations such as completion or withdrawal rates.

Discussion: As suggested by several commenters, the Secretary has carefully reviewed each requirement in the proposed regulations in light of statutory intent. The Secretary has also carefully considered both the burden of the proposed regulations on institutions and SPREs, in terms of cost, duplication of effort, and the added recordkeeping and reporting requirements. Similarly, the Secretary has considered the

benefits of the proposed regulations, not just to institutions and SPREs but to students and the general public as well. A particular concern of the Secretary has been how to ensure that the regulations hold the three members of the triad accountable for the manner in which they fulfill their responsibilities under the HEA yet still provide each member of the triad the flexibility to determine the appropriate means to carry out those responsibilities.

The Secretary acknowledges that there is a potential risk with this strategy, however. By giving SPREs maximum flexibility in these regulations, by giving accrediting agencies corresponding flexibility in the regulations for Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, and by retaining authority for the Secretary to set specific requirements implementing the certification process, the danger exists that institutions will be burdened with reporting requirements that are similar, but not identical, thus increasing not only the reporting requirement but the recordkeeping requirement and cost as well. For this reason, the Secretary strongly urges a coordinated approach to any reporting requirement that may be imposed on institutions by the regulations implementing the Program Integrity Triad. Specifically with respect to States, the Secretary urges SPREs to impose reporting requirements on referred institutions only after they carefully examine any publicly available information related to those requirements, any similar reporting requirements imposed on institutions by either the Department or accrediting agencies under the regulations governing the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, and any methodologies currently used, or mandated for use, by institutions in calculating the required information. The Secretary hopes that by bringing this potential risk of increased burden on institutions to the attention of the entire higher education community—without specifically addressing it in regulation—the community can work together to prevent undue burden at the same time it ensures proper accountability. The Secretary expects to take a leadership role in implementing a coordinated strategy to manage the triad with the goal of maximizing effectiveness while minimizing burden, duplication, and inconsistencies among SPREs, accrediting agencies, and the Department.

The discussion that follows addresses the commenters concerns and the Secretary's response to those concerns.

Section 667.1 Scope and Purpose

Comments: Many commenters interpreted this section as applying State oversight to all institutions in a State. As a result, these commenters believed that the Secretary expanded the SPRP beyond that authorized in the statute. The commenters believed that the NPRM's stated purpose of the program, "to strengthen State oversight of institutions participating in the title IV, HEA programs through development of State standards for those institutions," was inaccurate and "unduly alarming" because it suggested that a SPRE was authorized to establish review standards for all institutions in a State. Many of these commenters believed the primary purpose of the program was to reduce fraud and abuse in the title IV, HEA programs through State oversight of selected institutions. Many other commenters believed that Congress intended the program to focus exclusively on "problem institutions" identified by the Secretary, i.e., those institutions that have serious academic or financial problems or those institutions that have otherwise failed to fulfill their fiduciary responsibilities in administering the title IV, HEA programs.

Discussion: The Secretary notes that § 667.1, as proposed, was not intended to apply to all institutions in a State but only to institutions in a State that were participating in the title IV, HEA programs. The Secretary agrees that a SPRE only has authority to review "referred institutions" under the standards it develops under this program, and therefore agrees that the provisions of § 667.1(a) could be viewed as overbroad. The Secretary also agrees that a primary purpose of the SPRP is to reduce fraud and abuse in the title IV, HEA programs.

Changes: Section 667.1(a)(1) has been revised to clarify the purpose of the SPRP, and to clarify that under the SPRP a State's standards apply only to referred institutions and that a State may review only referred institutions under those standards.

Comments: One commenter urged the Secretary to indicate that a SPRE could take an action against an entire institution or one of the institution's branch campuses, additional locations, or educational programs. The commenter believed there would be instances where a SPRE could determine that a branch campus or an additional location of the institution, but not the entire institution, should be terminated from the title IV, HEA programs. The commenter also noted that several of the State's standards apply only to specific educational programs and argued that it could be inappropriate for a SPRE to take an adverse action against the entire institution if the basis for that action was a finding directly related to a specific educational program offered by that institution.

Discussion: The Secretary agrees that a SPRE has flexibility under the SPRP to craft a remedy along the lines suggested by the commenter. Thus, the SPRE can require an institution to stop offering a particular program or stop offering programs at particular locations or branch campuses. However, the Secretary believes that the authority of a SPRE under section 494C(h) of the HEA to determine that an institution should no longer participate in the title IV, HEA programs relates to terminating the institution as a whole, not to particular parts of the institution.

Changes: None.

Section 667.2 Definitions

Education and General Expenditures

Comments: One commenter recommended that instead of using the statutory definition of *education and general expenditures*, used for purposes of Title III of the HEA, which governs the Strengthening Institutions Program, the Secretary adopt the definition used by the American Institute of Certified Public Accountants. In addition, the commenter noted that two financial-standard-making bodies have issued or have under consideration changes that will modify the current accounting and reporting standards. The commenter suggested that the final regulations refer only to current generally accepted accounting principles and financial reporting requirements by source rather than provide a specific definition of education and general expenditures.

Discussion: The Secretary believes that it is most appropriate to use a definition of education and general expenditures for this program that is already included in the HEA.

Changes: None.

Professional Program

Comments: Several commenters agreed with the proposed definition of professional program.

Several other commenters argued that professional education is placed in the same category as occupational and vocational education with regard to the standards described in sections 494C (d)(8) and (d)(14)(C) of the HEA. The commenters contended that the use of professional education in this context implies a limited use of the term; namely, one that is closely related to

vocational education. These commenters suggested that the proposed definition of *professional program* be modified to include only programs at or below the associate degree level.

Several commenters suggested adopting the Integrated Postsecondary Education Data System (IPEDS) definition of *first professional degree* to ensure compatibility with data collected at the Federal level.

One commenter writing on behalf of a SPRE noted that *professional programs* are defined and governed under the State's education and judiciary Laws. The commenter urged that the definition of *professional program* recognize a State's statutory definition as provided under section 494C(d) of the HEA. (That section of the HEA requires a State to develop standards that are consistent with the constitution and laws of the State.)

Discussion: Secretary disagrees with those commenters that suggest that the term *professional program* be limited to programs at or below the associate degree level. The term *professional program* is commonly accepted as encompassing programs at higher degree levels.

The Secretary agrees with the commenter that the proposed definition of *professional program* be modified to recognize State law.

The Secretary believes that the IPEDS definition of *first professional degree* is too narrow. Under that definition, the term *profession program* would encompass only 10 fields of study. However, the Secretary also agrees that the proposed definition was overly broad in that it permitted overlap between what constitutes professional education and what constitutes vocational education. The final regulations need to make the distinctions between both types of education clear. See also the discussion of *vocational program.*

Changes: The Secretary has revised the second element of the proposed definition to maintain a clear distinction between the terms *vocational program* and *professional program*. Thus, a *professional program* is an educational program that prepares individuals for an occupation, if that occupation requires, in part, at least a bachelor's degree to qualify for entry. Also, the definition is expanded to allow a SPRE to use a State's statutory definition of the term *professional program*.

Vocational Program

Comments: All commenters agreed that the definition of the term *vocational program* under the SPRP be the same as the definition of *vocational education* under the *Accreditation* regulations, 34 CFR part 602. Several commenters agreed with the proposed definition of a *vocational program*. Most of these commenters preferred the SPRP definition to that proposed in the accreditation NPRM.

Many commenters writing on behalf of community colleges and universities believed the proposed definition of *vocational program* was too broad. Many of these commenters believed strongly that proprietary institutions were primarily responsible for abuses in the title IV, HEA programs, and it was unfair to classify associate degree programs as vocational programs or to include any degree programs offered by community colleges or universities within the scope and meaning of the term *vocational program*.

Many commenters writing on behalf of proprietary and vocational institutions believed strongly that the proposed definition was too narrow. These commenters noted that most postsecondary educational programs are employment or career oriented and that students who enroll in those programs should be treated equally, regardless of the institution they chose to attend. These commenters believe that the term *vocational program* should include all undergraduate programs.

One commenter agreed with the propositions that the commenter claimed were presented in the accreditation NPRM that (1) every postsecondary educational program is technically vocational, and (2) while all programs may be vocational in nature, not all programs are academic. This commenter suggested that a better case be made for classifying programs as "academic" or "nonacademic." Under this approach, the term *vocational program* would be replaced by the term *nonacademic program* and the term *academic program* would be defined to include any program described under proposed 34 CFR 668.8(c) (1) and (2), that (1) a program of at least two academic years in length that provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary, or (2) a program in which each course is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

Many commenters believed that the proposed definition was too vague. Several of these commenters suggested adopting the definition of an "occupationally specific program," as that term is defined in the CIP and used under IPEDS. These commenters noted that the National Center for Education Statistics and other Federal agencies use this definition to obtain data from institutions through IPEDS for research and other purposes.

Discussion: The Secretary agrees with the commenters that the definition of *vocational program* in this part should be the same as the definition of *vocational education* in the accreditation regulations, 34 CFR part 602.

The Secretary further agrees with those commenters that suggested that the IPEDS/CIP definition, with minor modifications, is the most appropriate definition to use in this part and in the accreditation regulations because under that definition, educational programs are classified in a manner that is congruent with various SPRP statutory provisions that require a clear identification and reporting of educational programs offered by an institution that are occupationally specific and employment related. *See*, for example, the standards described under section 494C(d)(7) of the HEA, "If the stated objectives of the courses or programs of the institution are to prepare students for employment * * *;" section 494C(d)(8) of the HEA, "Availability to students of relevant information by institutions of higher education, including * * * information related to market and job availability for students in occupational, professional, and vocational programs; and * * * information regarding the relationship of courses to specific standards necessary for State licensure in specific occupations;" and section 494C(d)(14)(C) of the HEA, "The success of the program at the institution, including * * * with respect to vocational and professional programs, the rates of placement of the institution's graduates in occupations related to their course of study."

The Secretary disagrees with the commenter who suggested classifying programs as "academic" and "nonacademic," because the Secretary disagrees with the commenter's premise that all vocational programs are "nonacademic" programs.

The Secretary disagrees with those commenters who suggest that the term *vocational program* excludes in some manner degree programs offered by colleges and universities. The statute does not exempt types of institutions; rather, as noted above, the statute clearly speaks in terms of vocational programs offered at institutions.

Changes: A vocational program is defined as "an educational program,

below the bachelor's level, designed to prepare individuals with skills and training required for employment in a specific trade, occupation, or profession related to the educational program." The Secretary notes that this definition is operationally consistent with the IPEDS/CIP definition of an "occupationally specific program."

Section 667.3 State Agreement

Comments: Several commenters suggested that the Secretary specify more clearly when sanctions would be imposed on a State that failed to establish review standards. These commenters recommended that the Secretary impose sanctions on a State that failed to establish review standards by the end of the second year. However, these commenters suggested different time periods for measuring the end of that second year. These suggestions included using the Federal fiscal year, the State fiscal year, the calendar year, and the planning year.

Discussion: The Secretary agrees to be more specific in these regulations with regard to when sanctions will fall on a State that fails to establish review standards. Because the Secretary encourages all States to participate in the program, the Secretary has chosen a deadline date for sanctions that should enable all States to avoid that sanction.

Changes: Section 667.3(d)(4) has been revised to provide that a State will have until December 31, 1995 to submit State review standards that are subsequently approved by the Secretary if the State received fiscal year 1993 funds to carry out SPRP activities, and until December 31, 1996 to submit those standards if the State that did not receive fiscal year 1993 funds to carry out SPRP activities. The deadline date for imposing sanctions has been changed from the date on which standards are approved to the date on which approvable standards are submitted to the Secretary for approval.

Comments: Several commenters writing on behalf of SPREs argued that the Secretary should not impose sanctions on a State that failed to establish review standards within two years if the reason for exceeding the proposed two-year limit was due to (1) a State requirement to codify those standards in State regulations, or (2) a condition beyond the control of the SPRE.

Discussion: The Secretary disagrees that codifying standards in State regulations is a valid reason for not imposing sanctions on a State that fails to establish review standards. Under § 667.12(a)(2), a State establishes review standards if those standards meet the requirements in § 667.21 and the Secretary does not approve those standards under § 667.22. This process of establishing standards is distinct from the process a SPRE may need to follow to codify standards in State regulations. Accordingly, a SPRE may submit the State's standards to the Secretary for evaluation while simultaneously beginning the process to codify those standards in State regulations as long as the State coordinates the two processes.

Moreover, as noted above, the Secretary has extended the deadline date for submitting approved standards to the Secretary. Therefore, the Secretary believes that no State codification process should prevent a State from submitting its standards in a timely manner. Similarly the Secretary believes that a State should be able to meet that deadline regardless of conditions outside its control.

Changes: None.

Comments: Several commenters were concerned that the provision in proposed § 667.3(b)(3)(iii) that stated that "the SPRE will keep records or have access to records * * *" implied that the SPRE had the authority to (1) require nonreferred institutions to submit financial and standards-related information to the SPRE, and (2) gain access to the records of nonreferred institutions without first obtaining authorization from those institutions for that access.

Discussion: It is not the Secretary's intention that a SPRE generally have records or access to records of nonreferred institutions, and the Secretary agrees to clarify this point.

Changes: Section 667.3(b)(3)(iii) is revised to require State assurance that a SPRE will keep records or have access to records of referred institutions, and will provide requested information to the Secretary for purposes of financial and compliance audits of referred institutions. A new § 667.3(b)(3)(iv) is added to require State assurance that SPRE will keep records or have access to records, related to its activities under this part, and will provide requested information to the Secretary, for purposes of program evaluations of the manner in which the SPRE carries out its SPRP responsibilities.

Comments; A few commenters suggested that the proposal to include in the State's agreement with the Secretary a description of the SPRE's relationship with State-level entities be removed on the grounds that it would unnecessarily divert SPRE resources.

Discussion: The Secretary disagrees that such relationships would unnecessarily divert SPRE resources. To the contrary, the Secretary believes strongly that to carry out effectively the purposes of this part, a SPRE must avail itself of relevant information regarding the actions that any State agency takes or plans to take with regard to a referred institution in the State.

Changes: None.

Comments: Many commenters acknowledged that the statute requires a SPRE to review referred institutions on a schedule that coincides with the Secretary's schedule for recertifying institutions. Several commenters urged the Secretary to require a SPRE to review only those institutions that represent the highest risk for fraud and abuse. A number of other commenters suggested that the SPRE develop additional priorities for the review of this set of institutions that would be compatible with the Secretary's schedule for recertifying these institutions.

Discussion: The Secretary acknowledges that a SPRE's allotment of funds may be inadequate to review all referred institutions on a schedule that coincides with the Secretary's schedule for recertifying institutions. For that reason, the Secretary proposed in § 667.12(c) and restates in that same section in these regulations, to allow a State to establish review priorities, giving States discretion to establish their own priorities, subject to the requirement for coordinating with the Secretary's schedule for recertification of institutions. The Secretary expects that, to the extent possible, States will select "high-risk" institutions for review.

Changes: None.

Section 667.4 State Postsecondary Review Entity

Comments: Many commenters believed strongly that this section of the regulations be amended to reflect unambiguously the NPRM preamble discussion that a SPRE merely represents certain State entities.

Discussion: Under section 494A(b)(1) of the HEA, the SPRE must represent any State entity that is responsible for (1) providing the legal authorizations to institutions to operate in the State, for the purposes of 1201 of the HEA, and (2) ensuring that each institution in the State remains in compliance with the State's review standards developed pursuant to section 494C of the HEA. The Secretary simply repeated these statutory provisions in proposed § 667.4. In the NPRM preamble, the Secretary indicated that these statutory provisions did not give a SPRE itself authority under this part to provide licenses to or legally authorize institutions to operate in a State, or

ensure that all institutions in the State remain in compliance with the State's standards. The Secretary agrees to accommodate the commenters by including these statements in the regulations.

Changes: Section 667.4(b) has been revised to indicate that under the SPRP, a SPRE is not authorized by the SPRP to (1) grant State authorization to provide postsecondary education in that State, or (2) require a nonreferred institution to comply with State review standards established under § 667.21.

Section 667.5 Criteria the Secretary Uses To Refer Institutions to a SPRE for Review

Comments: Many commenters objected strongly to the proposed procedures regarding the confirmation of the data used by the Secretary to refer an institution to a SPRE for review. These commenters urged the Secretary to discard those procedures and establish new procedures under which a referred institution would be provided an opportunity to challenge the referral data before the Secretary referred that institution to a SPRE. Under the suggested procedures, the Secretary would not refer an institution to a SPRE if that institution challenged the referral data within the time permitted by the Secretary. The Secretary would only refer an institution to a SPRE if the institution did not challenge the referral data or the Secretary confirmed the challenged referral data.

Discussion: Based on public comment and further review, the Secretary agrees with the commenters that an institution should be given an opportunity to challenge the accuracy of referral data before the Secretary refers that institution to a SPRE for review. Similarly, the Secretary agrees with the commenters that an institution should be given an opportunity to challenge the accuracy of referral data before a State notifies the Secretary that it wishes to review an institution on the basis of having more current information that the institution satisfies one or more of the referral criteria.

If an institution challenges the information on which the Secretary or the State based its referral, the Secretary and the State presume that records maintained in the normal course of business by ED, a guaranty agency under the FFEL programs, a SPRE, a State licensing agency, or another State agency are accurate unless the institution proves to the Secretary's satisfaction that the records are not properly maintained or are inaccurate. Thus, unless an institution can prove that the information on which its referral is based is inaccurate, the institution will be referred for SPRE review.

Changes: Section 667.5 has been revised to allow an institution to challenge the accuracy of referral data before the Secretary refers that institution to a SPRE.

Comments: With respect to the § 667.5(b)(11), under which the Secretary refers an institution that has been subject to a pattern of complaints, several commenters urged the Secretary to remove references to complaints from faculty, or persons other than students. These commenters argued that the statute requires the Secretary to consider only complaints from students. In addition, some commenters contended that statute does not authorize the Secretary to use complaint information collected by the SPRE for referral purposes.

Discussion: The Secretary agrees with the commenters regarding references to complaints from "faculty, or others." Under section 494C(b)(11) of the HEA, the referral criterion makes specific reference to the complaint system a State is to develop.

The Secretary believes that the most appropriate entity to provide to the Secretary information about a pattern of the complaints is the SPRE.

Changes: The Secretary has limited consideration of a pattern of complaints as a basis for referrals under § 667.5(b)(11) to a pattern of student complaints.

Comments: A number of commenters agreed that it would be wasteful continually to refer an institution to a SPRE for review for an event that happened once. In the NPRM, the Secretary proposed to reserve for future consideration whether to refer an institution to a SPRE for review under three criteria if on the basis of an earlier referral, the SPRE conducted a review of the institution and made no significant findings. These criteria were those relating to late audits, changes of ownership, and the first five years of participating in a title IV, HEA program. These commenters also suggested that this consideration ought to be given to more or all of the referral criteria.

Discussion: The Secretary attempted to resolve this problem by proposing remedies through legislation. However, in the Higher Education Technical Amendments of 1993, Public Law 103–208, only one of the three subject criteria, the criterion set forth in § 667.5(b)(10) was addressed. With regard to that criterion, an institution participating for less than five years in a title IV, HEA program must be referred to a SPRE, but the Secretary may determine that the SPRE need not review the institution if the institution was referred solely under § 667.5(b)(10), and the SPRE previously conducted a review of that institution and found no violations of the State's standards. For the other two criteria, the Secretary believes that section 494C(b) of the HEA requires the Secretary to refer institutions that meet those other two requirements. However, to avoid wasting a SPRE's time and effort, the Secretary will allow a SPRE to place institutions on the lowest review priority if the institutions were referred because of a late audit or a change in ownership and a previous SPRE review found no significant violations of State standards.

Changes: Section 667.23(a)(2) is changed to provide that the Secretary may determine that a SPRE need not review an institution that was referred only because it meets § 667.5(b)(10), if the SPRE previously conducted a review of that institution and found no violations of the State's standards. In addition, a new § 667.12(c)(3)(ii) is added to permit a SPRE to place an institution in the lowest priority for review if the institution was referred because of a late audit or a change in ownership and a previous SPRE found no significant violations of State standards.

Comments: A few commenters noted that the Secretary did not have complete data pertaining to several of the referral criteria and were concerned that the Secretary would nevertheless refer institutions to a SPRE based on this incomplete data or on assumptions regarding this data.

Discussion: The Secretary acknowledges that complete data for all the referral criteria are not available. However the Secretary assures commenters that no referral will be made based on assumptions or incomplete data.

Changes: None.

Comments: Several commenters noted that the Secretary sometimes withdraws an action to limit, suspend, or terminate an institution's participation in a title IV, HEA program because the Secretary concludes retrospectively that such an action was not warranted. Therefore, these commenters argued that the proposed language for this referral criterion be modified to reflect that the Secretary would not refer an institution subject to limitation, suspension, or termination until the Secretary completes that action.

Discussion: If the Secretary withdraws a limitation, suspension, or termination action solely because the Secretary determines that there was no factual

basis for that action, the Secretary will not consider that action as triggering a referral. However, if the Secretary withdraws a limitation, suspension, or termination action against an institution because of an action on the part of the institution, or the promise of some current or future action on the part of the institution, the initiation of the Secretary's action will trigger a referral.

Changes: None.

Section 667.6 SPRE Selection of Institutions for Review

Comments: Many commenters were concerned about the SPRE's authority under the statute to select an institution for review if the SPRE had "reason to believe" that the institution was engaged in fraudulent practices. Some of these commenters believed that SPREs would abuse this authority by using it as the basis to review any institution. A number of commenters believed strongly that the regulations should clarify what is meant by the phrase "reason to believe" and define the term "fraud."

Discussion: The Secretary disagrees with the commenters that SPREs would abuse the statutory authority that allows SPREs to review institutions that they have reason to believe are engaged in fraudulent practices.

With regard to a definition of fraud, in general, fraud involves intentional misconduct to obtain a benefit.

Changes: None.

Comments: Many commenters believed that an institution selected by the SPRE on the basis of "more recent data" should be afforded the opportunity to challenge that data before the SPRE may conduct a review of that institution. In addition, several commenters urged that institutions selected by the State for review under proposed § 667.6 should be afforded the opportunity to challenge the State's data. A few of these commenters believed that the confirmation procedures should be waived in cases where the State has reason to believe that institutions were engaged in fraudulent practices.

Discussion: The Secretary agrees based on the reasons in the discussion under § 667.5.

Changes: A change has been made similar to the change in § 667.5.

Section 667.7 Notice to SPRE of Federal Actions; and § 667.8 Notice to Nationally Recognized Accrediting Agency of SPRE Actions

Comments: A number of commenters believed that the Secretary should shorten the time period proposed in the NPRM for notifying SPREs of Federal actions. Several of these commenters suggested shortening the time period to 5 days, while others suggested notification within 48 hours in cases where the Secretary intended to terminate an institution's participation in a title IV, HEA program.

A few commenters suggested that the Secretary notify the SPRE in writing of the applicable action.

Several commenters suggested that the Secretary make clear that an action includes a limitation, suspension, or termination proceeding.

A number of commenters urged the Secretary to (1) provide to accrediting agencies the same information provided to SPREs, and (2) require States to provide to accrediting agencies information regarding SPRE reviews of referred institutions.

Discussion: The Secretary proposed 10 days in the NPRM because in some instances the Secretary may need to confirm information before providing it to a SPRE. The Secretary agrees that accrediting agencies should also be notified by the Secretary and by SPREs. Accordingly, the Secretary (1) intends to notify SPREs and accrediting agencies of Federal actions as soon as possible and provide this notification orally in writing, and (2) will require States to notify accrediting agencies of SPRE actions. The Secretary further agrees to include as Federal actions those identified by the commenters.

Changes: Section 667.7 is revised to describe an action taken by the Secretary against an institution as one that includes a limitation, suspension, or termination proceeding. A new § 667.8 is added to require SPREs to notify appropriate accrediting agencies of SPRE reviews of referred institutions and SPRE findings and planned and actual corrective actions. This section is also revised to provide that the Secretary notifies the appropriate nationally recognized accrediting agency of actions taken by the Secretary or another Federal agency against an institution.

Section 667.9 Institutions With Locations in More Than One State

Comments: Many commenters objected to the proposed requirement that an institution's branch campuses or additional locations be subject to the standards of the State in which those branch campuses or additional locations are located. These commenters believed strongly that an institution's branch campuses and additional locations be subject only to the standards of the State in which the main campus of that institution is located. The commenters argued that it is unreasonable and burdensome to require an institution's branch campuses and locations to comply with different State standards.

Discussion: The Secretary disagrees with the commenters. This provision is consistent with the requirements that an institution must satisfy to obtain institutional eligibility under the HEA for locations or branch campuses in States different from the main campus. For institutional eligibility purposes, the institution must obtain a license or other legal authority to provide postsecondary education at the branch campus or additional location from the State in which the branch campus or other location is physically located, not the Senate in which the main location is physically located.

Changes: None.

Section 667.11 Allotment Formula

Comments: Two commenters writing on behalf of States that would receive the minimum allotment under the proposed formula believed strongly that a SPRE could not conduct reviews of referred institutions and carry out its other responsibilities under this part within that allotment. One of these commenters suggested the minimum allotment be increased from $50,000 to $75,000. The other commenter contended that a SPRE's actual costs in carrying out its responsibilities would be five to ten times the proposed minimum amount.

A few commenters writing on behalf of States were concerned that unanticipated and extraordinary expenses a SPRE could incur as a result of a legal challenge from a referred institution to the SPRE's determination that the institution should no longer participate in the title IV, HEA programs, could prevent the SPRE from carrying out its planned activities under this part. These commenters suggested that the final regulations provide for an appeal to the Secretary by the SPRE for additional funds to meet those legal costs and unanticipated and extraordinary expenses.

Discussion: The Secretary agrees with the commenters that the proposed minimum allotments were too low and has raised that minimum, as suggested by one of the commenters, from $50,000 to $75,000. The Secretary also raised the minimum allotment from $20,000 to $30,000 for Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

The Secretary also agrees with the commenters that a SPRE should be allowed to petition the Secretary for additional funds for unanticipated and extraordinary legal expenses. The

Secretary use funds available for reallotment for this purpose.

Changes: The formula in § 667 is revised to provide an allotment of $30,000 each to Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, and to provide a minimum allotment of $75,000 to each of the other States. This section has also been revised to provide that funds available for reallotment may be used to pay for a SPRE's unanticipated and extraordinary legal expenses.

Comments: Several commenters writing on behalf of States disagreed with the proposed provision under which the Secretary would reallot, to other SPREs, funds not spent by a SPRE by the end of the period for which those funds were made available. These commenters suggested that a SPRE be allowed to carry over to the next allotment period any unspent funds from the current allotment period if the SPRE could demonstrate that it was making progress in carrying out allowable activities.

Discussion: The Secretary believes that funds allotted to a State for a specific period be spent by the SPRE during that period. If a SPRE cannot spend its allotment for that period, the Secretary believes that those funds are best used by carrying out SPRP activities during that period through reallotment to other States.

Changes: None.

Section 667.12 Application for Funds

Comments: A few commenters writing on behalf of States noted that it would be wasteful to require a SPRE to prepare and submit on two different occasions plans and budgets to receive its entire allotment for a fiscal year if the SPRE was unable to complete the development of review standards during the previous fiscal year for which it received an allotment.

Discussion: The Secretary agrees with the comments but points out that while this procedure can be modified, under § 667.3 a State must have submitted by December 31, 1995 or, in some instances, December 31, 1996, standards that can be approved by the Secretary.

Changes: Proposed § 667.12(d) is revised to allow any SPRE that did not complete development of review standards to submit simultaneously in its application for funds a plan and budget to complete developing review standards and a plan and budget to review referred institutions.

Comments: A commenter writing on behalf of a number of associations suggested that each State should be required to submit a plan, not only to develop the review standards and complaint procedures, but also to identify information maintained by institutions and State agencies that is relevant to the development the State review standards. Additionally, the commenter suggested that the plan should also include the costs of coordinating information systems and should identify information not currently collected that is needed to demonstrate compliance with review standards. The commenter recommended that the proposed regulations be revised to require a State to provide the estimated total cost to develop the SPRE's information system if the total cost exceeds the State's fiscal year 1993 allotment. The commenter also suggested that a State be required to provide the total estimated cost to review all referred institutions even if the total estimated cost of reviews exceeds the State's allotment. The commenter believes these costs are among those that President Clinton's Executive Order 12866 requires the Secretary to identify and consider in determining, when developing regulations, the costs and benefits of collecting and maintaining regulatory information.

Discussion: The Secretary disagrees with the commenter. The statute governing the SPRP does not require a SPRE to perform the activities suggested by the commenter, and the Secretary believes that SPREs should not be forced to engage in those activities.

The Secretary considers these regulations to satisfy section 1(b)(6) of Executive Order 12866 that requires each agency to assess both the costs and benefits of the intended regulations. The Secretary further believes that it is unnecessary to require a State to provide the estimated costs to carry out any functions of the SPRP that exceed the State's allotment since the SPRE is not required to perform functions in excess of that allotment.

Changes: None.

Comments: One commenter was concerned that a student or other party may try to hold a SPRE liable for alleged harm based on his or her reliance on an institution's continued eligibility for title IV, HEA program funds in a case where the institution is referred to a SPRE because the SPRE did not have sufficient funds to conduct that review. The commenter suggested that a provision preventing any liability from falling on the SPRE for failing to review an institution because of inadequate funding be added to the regulations.

Discussion: While nothing can prevent a person from suing a SPRE for the reasons cited by the commenter, in the Secretary's view, there would be no legal basis for charging a SPRE with any liability under the facts described by the commenter.

Changes: None.

Comments: Most commenters agreed with the Secretary that the SPRE's review priorities should reflect the objectives of protecting students, saving tax dollars, and promoting educational quality, but differed on the methods to best accomplish those objectives. Many of these commenters agreed strongly with the proposal in the NPRM that a SPRE be provided maximum flexibility in selecting institutions to review, except as provided by the statute; i.e., under section 494A(b) of the HEA, a SPRE must review referred institutions on a schedule that coincides with the Secretary's schedule for recertifying those institutions. Several of these commenters suggested that the SPRE be required to publicize its review priority system to assure consistent selection of referred institutions under that system.

Many commenters believed strongly that a SPRE should first review referred institutions that meet multiple referral criteria. Many other commenters believed strongly that a SPRE should consider, in addition to the referral criteria, other factors, such as data measuring student outcomes (for instance, graduation and placement rates), and other information a State might have that would indicate that a referred institution was not properly providing its educational programs. Several commenters suggested that the Secretary set the review priorities to ensure that all SPREs select institutions on the same basis. A number of commenters contended that an overwhelming number of institutions scheduled by the Secretary for recertification would also meet a referral criterion. Those commenters feared that this pool of institutions would be so great that a SPRE would never be able to select institutions under the State's review priority system. To alleviate this problem, the commenters recommended that the NPRM be revised to allow a SPRE to select institutions for review under the State's priority system from among the pool of referred institutions the Secretary scheduled for recertification.

Discussion: If a State's allotment is less than will be needed to review all referred institutions, the Secretary believes that a SPRE is in a better position than the Secretary to determine which institutions to select for review from among all the referred institutions. The Secretary also believes that any of the review priorities suggested by the

commenters could be effective in selecting "problem institutions" for review under this program, provided that those priorities reflect the objectives of protecting students, saving tax dollars, and promoting educational quality. Therefore, the Secretary will not require a SPRE to adopt any of the commenters priority suggestions for establishing priorities.

The Secretary agrees with the commenter who noted that for some States for some years, the number of institutions scheduled for recertification by the Secretary may exceed the money allotted to the State for reviews. Under that circumstance, the SPRE will use its priority criteria to select for review only institutions scheduled for recertification by the Secretary.

The Secretary agrees with the commenters who recommended that a SPRE should make known its review priorities.

Changes: Section 667.(23)(b) is revised to require a SPRE to make available information regarding its review priority system after its plan submitted under § 667.12 is approved by the Secretary and prior to conducting reviews of referred institutions. Also, in response to comments regarding review priorities under § 667.5, a new § 667.12(c)(3)(ii) is added to permit a SPRE to place an institution in the lowest priority for review if the institution was referred because of a late audit or a change in ownership and a previous SPRE review found no significant violations of State standards.

Comments: Several commenters suggested that the final regulations contain procedures, in addition to the reallotment procedures, under which a State could request a supplemental allotment to carry out the requirements of the State Postsecondary Review Program.

Discussion: The Secretary disagrees with the commenters. If a State needs additional funds and those funds are available through reallotment, the Secretary will allow States to apply for those funds. Funds for the program's purposes are provided through annual, discretionary appropriations from Congress. The program is not an entitlement. The Secretary does not have the authority to award "supplemental allotments" beyond reallotment through these regulations.

Changes: None.

Section 667.14 Allowable Costs and Activities

Comments: Several commenters suggested that information sharing be added to the list of allowable activities.

Discussion: The Secretary agrees.

Changes: Section 667.14(c) is revised to include as an allowable direct cost sharing of information by a SPRE with other SPREs, the Secretary, other State agencies, accrediting agencies, institutions, private organizations, and others.

Comments: Several commenters suggested that the training of employees of private organizations, nationally recognized accrediting agencies, and peer review systems by considered allowable activities when the training is necessary for those employees to perform required activities contracted by a SPRE.

Discussion: The Secretary believes that in establishing a contract with a private organization, nationally recognized accrediting agency, or peer review system, the SPRE may include in the contract any training that is required for the contracted organization to carry out required activities, and the SPRE may pay for that training with SPRP funds.

Changes: None.

Section 667.15 Fiscal Procedures and Records

Comments: One commenter recommended that an audit of a SPRE's activities be performed annually instead of at least once every two years as proposed in the NPRM. The commenter indicated that annual audits are needed to protect Department and taxpayer interests in light of the fact that the SPRP is a new program.

The commenter also stated that annual audits would ensure that SPRE funds supplement, not supplant, existing licensing or review functions conducted by the State. The commenter further argued that SPREs should have annual audits because the HEA now requires institutions and others to have audits performed annually.

Discussion: The Secretary disagrees. The Secretary believes that more frequent audits are not necessary to monitor adequately the activities of a SPRE. The Secretary believes that requiring a SPRE to have an annual audit would divert funds away from performing reviews or referred institutions. Also, in the case of States that receive the minimum allotment, the cost of an audit would represent a significant portion of the allotment.

Changes: None.

Section 667.16 Supplement, Not Supplant, Requirement

Comments: A few commenters recommended that the Secretary review compliance with this requirement on a case-by-case basis. Several commenters suggested that a State document its activities and functions that are in place prior to the implementation of the program and be able to demonstrate to the Secretary that SPRE activities did not replace those activities or functions. A few commenters recommended that the Secretary monitor the allocation of general State funds to ensure that those funds either matched or exceeded the State's expenditure levels before the establishment of the SPRE.

Discussion: The Secretary believes that a State should maintain adequate documentation to show, on audit, that the funds spent for SPRE activities supplemented, but did not supplant, existing State licensing or review functions.

Changes: None.

Section 667.21 State Review Standards

The Secretary received many comments regarding the framework, proposed in § 667.21(b), under which a State develops review standards. In proposing the framework, the Secretary intended to achieve the following objectives:

(1) To recognize and account for the diversity of institutions that would be subject to the standards by allowing States to establish different standards for those institutions;

(2) To facilitate effective enforcement of State standards by requiring States to quantify certain standards, and by requiring States to specify the records and information an institution would need to maintain for those standards;

(3) To limit the scope of the quantitative standards by allowing a State to apply those standards only to regular students, i.e., students enrolled at an institution for the purpose of obtaining a degree, certificate, or other recognized credential offered by the institution; and

(4) To introduce a level of rigor in the standards by requiring a State to determine whether a comparable title IV, HEA program standard would be an acceptable State standard.

Quantified Standards

Comments: Many commenters writing on behalf of institutions and several accrediting bodies objected to the requirement proposed in the NPRM that a State quantify certain review standards by establishing "acceptable percentages" for those standards. Many of these commenters believed strongly that this requirement constitutes an "enforcement mechanism" and thus violates section 494C(k) of the HEA. A number of commenters acknowledged that the statute allows a State to establish quantitative standards but did not believe that the Secretary has the

authority under the statute to require a State to develop quantitative standards. A number of commenters believed that quantitative standards were too restrictive and feared that States would develop such standards without regard to the mission of institutions. Several commenters believed that enforcement of quantified standards would impinge on institutional autonomy and force institutions to shift their missions away from serving high-risk students. A number of commenters believed that standards reduced to "acceptable percentages" would either by arbitrary, and probably without legal defense, or statistical, and would, be definition, place a number of institutions below the acceptable levels, regardless of whether the performance of those institutions is otherwise outstanding. Still other commenters argued that standards based on minimum "acceptable percentages" would create a safe harbor for institutions that might otherwise be judged to be substandard. By achieving the numerical minimum, such institutions would be able to tie the SPREs' hands and escape adverse action that might otherwise be warranted because, under the NPRM, the SPRE must consider those institutions to be in compliance with the review standard.

Commenters writing on behalf of States and student legal services organizations agreed with the proposal. These commenters believed strongly that objective, quantified standards are essential for meaningful enforcement and regulatory review.

Discussion: The Secretary disagrees strongly with the commenters who contend that the proposed requirement that a State quantify certain review standards by establishing acceptable percentages for those standards, constitutes an "enforcement mechanism" in violation of section 494C(k) of the HEA. That section of the HEA states, "Nothing in this subpart shall restrict the authority of the States to establish mechanisms to enforce the standards established under subsection (d) or require the States to establish specific mechanisms recommended by the Secretary."

The restriction on the enforcement of standards in section 494C(k) is based upon the establishment of standards under section 494C(d). Therefore, the restriction on the enforcement of standards has no bearing on the establishment of those standards.

The Secretary disagrees with those commenters who indicated that the Secretary is without authority to require States to develop quantitative standards. The nature of the standards imposed by statute is such that without quantifiable measures, the standards would be meaningless.

While the Secretary understands the concerns of some of the commenters that States might develop standards without regard to institutional mission or that enforcement of quantified standards could either force institutions away from serving high-risk students, or allow some institutions that would otherwise be judged to be substandard under other measures to escape State oversight, the Secretary believes that quantitative student outcome standards are an extremely valuable measure of the success of an institution. Quite the contrary to the views of the commenters, the Secretary believes that the imposition of quantifiable standards will have the effect of improving institutional quality and will protect high-risk students from unscrupulous substandard institutions. Further, quantifiable standards will assist prospective students and their parents in making choices about attendance at institutions. The Secretary further notes there is nothing in this part that would preclude a State from taking into account the fact that an institution serves high-risk students.

Changes: No changes were made regarding the quantifiable standards in § 667.21(a)(17). However, the reader is referred to the discussion under the heading "Relationship between tuition-and-fee charges and remuneration" for information regarding changes made to the standard described in § 667.21(a)(9).

Different Standards for Different Types of Institutions

Comments: Many commenters writing on behalf of proprietary institutions objected strongly to the proposal to allow a State to develop different standards for different types or categories of institutions. These commenters argued that Congress intended that all institutions be judged under the same standards, except as explicitly provided in the statute.

Many other commenters agreed strongly with the proposal. A number of these commenters urged the Secretary to require, not simply allow, States to develop different standards for different types of institutions to ensure that all SPREs take into consideration the nature and mission of institutions.

Several comments urged the Secretary to allow States to develop different standards only for different categories of institutions to protect institutions from being placed in arbitrary categories by States and to promote nationwide consistency in identifying categories. The commenters recommended that institutions be categorized according to (1) their for- or not-for-profit status, (2) whether they grant degrees, and (3) the levels and types of degrees or educational programs they offer.

Discussion: The Secretary believes that State standards should reflect the mission of institutions and that enforcement of such standards will allow SPREs to accomplish most effectively the purpose of the SPRP. The fact that the SPRP is a program designed to strengthen the State role in the program integrity triad means that the program is intended to foster the flexibility that inevitably results from differences among the States. The Secretary reiterates that States are provided flexibility in developing standards. Thus, a State may categorize institutions or educational programs in a manner that the State deems appropriate.

Changes: None.

Regular Students

Comments: Commenters generally agreed that a State's standards should be applied only to regular students at institutions. A few commenters opined that quantified standards would be misleading and irrelevant to institutions that offer open admissions because many students who attend those institutions do not aspire to attain a certificate or a degree, yet have a specific educational goal.

Discussion: The Secretary believes that in evaluating student outcomes of an institution, and most particularly with regard to institutions offering open enrollment, the evaluation should be based on regular students because they are the ones who can qualify for title IV, HEA funds, the protection of which is one of the primary purposes of SPRP.

Changes: None.

Comparable Title IV, HEA Program Standard as an Acceptable State Standard

Comments: Several commenters objected to the proposal to require a SPRE to consider the relevance of a title IV, HEA program standard as a requirement in establishing the State's standards. The commenters believed that acceptance of Federal standards, and application of those standards, by a SPRE would have an adverse effect on institutions at which a small percentage of students receive assistance under the title IV, HEA programs.

Several other commenters believed the proposal is a reasonable approach because institutions that participate in the title IV, HEA programs already have to comply with these standards.

Several other commenters believed that this provisions should be expanded

to require a SPRE to adopt comparable State licensure standards if those standards are more rigorous than comparable title IV, HEA program standards. The commenters argued that if a SPRE adopts review standards that are less rigorous than the State licensing standards, institutions might later argue persuasively to the State legislature to reduce the State licensing standards to the level of lower SPRE standards on the grounds that varying standards would be onerous and confusing. At the very least, these commenters suggested that the Secretary require States to establish standards that are at least as rigorous as the comparable title IV, HEA program standards.

Discussion: The Secretary is giving SPREs latitude to develop standards and expects States to take into account comparable title IV, HEA program standards as they develop their own standards. The Secretary does not agree that this program will have an adverse impact on institutions at which only a few students receive title IV, HEA program assistance (1) because the SPRP only requires a SPRE to establish standards for referred institutions, and (2) because any standard that a SPRE establishes that is comparable to a title IV, HEA program requirement already applies to those institutions as title IV, HEA program participants. The Secretary agrees, however, with the commenters who noted that it does not make sense for a State to adopt standards under the SPRP that are weaker than its State licensing standards. Nevertheless, this is a matter that must be resolved among the appropriate State authorities.

Changes: None

Records and Information an Institution Must maintain to Demonstrate to SPRE its Compliance With the State's Standards

Comments: Many commenters strongly urged the Secretary to make clear in the final regulations that a SPRE may not require an institution that has not been referred by the Secretary to the SPRE for review to maintain these records and information. A number of these commenters suggested if that institution is later referred by the Secretary to the SPRE for review, the SPRE should be required to assist the institution in generating the required information, or that the SPRE should be required to allow the institution a reasonable time to comply with the State's standards and recordkeeping requirements.

Discussion: If an institution is referred to a State for review under the SPRP, the institution must satisfy the State's standards. If the institution was not otherwise required to keep records relating to its compliance with State Standards, and it did not keep those records, the Secretary agrees that the State should allow an institution a reasonable period of time to obtain records and information to enable the institution to demonstrate its compliance with the State's standards.

Changes: Section 667.21(b) is revised to require that if a referred institution was not otherwise required to keep records relating to its compliance with State standards, and it did not keep those records, the SPRE allow the institution a reasonable period of time to obtain those records to enable it to demonstrate its compliance with the State's standards.

Relationship Between Tuition-and-Fee Charges and Remuneration

Comments: Many commenters objected to the proposal that a State establish an acceptable percentage for the relationship between the tuition and fees charged by an institution for an educational program and the amount of money that a student who successfully completes that program actually earns. A number of commenters believed strongly that this approach would be administratively unmanageable for comprehensive institutions that offer a broad spectrum of programs, including programs in liberal arts, sciences, teacher education, engineering, and nursing.

Many commenters believed that the Secretary does not have the authority under the statute to require a SPRE to make a judgment regarding the reasonableness of the tuition and fees charged by an institution. Many of these commenters contended that the standard, as proposed in the NPRM, was tantamount to price-fixing. The commenters argued that this standard, as articulated in the statute, simply requires an institution to disclose to students and prospective students information on program costs and on earnings that a graduate of that program could reasonably be expected to make in an occupation related to that program.

Other commenters asserted that relating the amount of tuition and fees to the amount of money a graduate of an educational program earns assumes incorrectly that (1) the institution alone is responsible for a student's education and employment, and (2) salary is the only reason for education. The commenters pointed out that a student is also responsible for his or her education and that the student may choose a job that is rewarding in ways other than money.

A few commenters pointed out that States sometimes establish the tuition and fees for certain programs at public institutions. The commenters urged the Secretary to exempt these programs from this standard.

Many commenters contended that States do not have adequate data on wages and salaries either to establish an acceptable percentage or determine that an institution met that percentage. These commenters were concerned that the results of surveys conducted by an institution of its graduates' earnings would not be reliable. Finally, many commenters argued that any formula governing the relationship between tuition and remuneration consider State subsidies provided to public institutions to ensure a fair comparison of tuition and fees between like programs offered by all types of institutions.

A number of commenters agreed with the proposal.

Discussion: The Secretary notes that this requirement only applies to vocational programs and therefore does not apply to programs such as liberal arts programs.

The Secretary acknowledges that commenters are correct when they note that many variables influence whether a person obtains a particular job. However, the Secretary believes that one of the most important factors is the job training of that individual. Further, institutions that purport to offer education to prepare students for occupations ought to be able to substantiate that the education they provide does just that. In addition, for students who receive loans for their education, it is reasonable to expect that they will qualify for positions that will enable them to repay those loans. For these reasons, the Secretary disagrees with the commenters who categorized this standard merely as a student consumer information disclosure requirement or that it is tantamount to price fixing. More appropriately, under this standard, a SPRE must determine whether an institution's tuition and fees are too high, given the remuneration that its graduates can reasonably expect to receive.

Finally, based on public comment and further review, the Secretary has decided that an institution should not be required to survey its graduates to obtain employment and wage data; rather, a SPRE may rely on local, State, or Federal employment and wage data to determine the institution's compliance with this standard.

Changes: Section 667.21(b)(4)(i) is revised to require a State to quantify this standard by establishing criteria (rather than just a percentage, as in proposed

§ 667.21(b)(4)(i)) under which a SPRE determines if the tuition and fees charged by an institution for a vocational program are excessive compared to the amount of money that a student who successfully completes that program may reasonably be expected to earn. Section 667.21(a)(9)(i) is changed to clarify that this is the purpose of the standard. In addition, § 667.22(b)(5) is revised to require a State to specify the methods and data used by the SPRE to determine if the tuition and fees charged by an institution for a vocational program are excessive.

Assessing a Student's Ability to Complete the Program

Comments: Many commenters objected to the proposal that a SPRE judge the effectiveness of an institution's method to assess that a student has the ability to complete successfully the educational program for which he or she applied. Many commenters argued that there is no correlation between an institution's assessment method and the graduation rate of students in an educational program. The commenters cited many reasons that a student might fail to complete a program that is unrelated to the student's academic ability, including motivation, personal finances, family obligations, a change in employement, and others, and suggested that the proposed requirement be removed. Many other commenters contended that the Secretary exceeded statutory authority in proposing this requirement. A number of these commenters argued that requiring a SPRE to judge the effectiveness of an institution's assessment method could lead to the use of mandatory, standardized tests, or other methods that require profiles of program completers, for determining a student's admission into a program. These commenters believed the use of these methods would lead institutions whose mission is to serve high-risk students to change their mission.

Several other commenters suggested that the proposed standard be expanded to (1) include other positive outcome measures, or (2) allow a SPRE to consider the rigor, fairness, and consistent application of an institution's assessment method in judging that method.

A number of commenters agreed with the proposal but suggested that an SPRE's judgment regarding the effectiveness of an institution's assessment method should be limited to vocational programs. Like many other commenters, these commenters contended that there is little direct correlation between student success and admissions standards for degree programs. One of these commenters argued that there is a much stronger correlation between student success and admissions criteria in vocational programs than in degree programs because of the shorter length and more narrow focus of vocational programs. The commenter believed there is a greater need to assess the adequacy of the admission standards for vocational programs because the population served by those programs tends to be less prepared for postsecondary education than students in degree programs. Another commenter believed strongly that an extraordinarily high student drop-out rate (1) may indicate other serious problems with an educational program, including the poor quality of its teachers or the lack of necessary equipment, and (2) invariably indicates enrollment of students unable to understand or handle course material.

A few other commenters believed that the "ability-to-benefit" provision in the title IV, HEA program regulations satisfies the statutory requirement under this part that an institution have a method to assess a student's ability to complete successfully an educational program.

Discussion: The Secretary is convinced that many points made by the commenters are valid, and that other standards adequately accomplish the Secretary's originally stated objectives in proposing this standard. The Secretary clarifies, however, that the standard described in § 667.21(a)(3) applies to all regular students at an institution, not just those students who qualify to receive financial assistance under the title IV ability-to-benefit provisions.

Changes: Proposed § 667.21(a)(4) is removed.

Suggestion to Augment the Standard Proposed in § 667.21(a)(7) Concerning Compliance With Health and Safety Standards

Comments: Most commenters objected to the suggestion in the preamble to the NPRM for views on whether a SPRE, as part of its review, should determine an institution's compliance with statutes and regulations governing access to disabled individuals. They considered the proposal to be beyond the scope and purpose of the SPRP.

Discussion: Based on comments and further review, the Secretary agrees not to include this provision. Disabled individuals are protected under applicable statutes without the additional provision for a SPRE review in that area.

Changes: None.

Standard in Proposed § 667.21(a)(9) Governing Institutional Plans for Closure

Comments: A number of commenters, including several commenters writing on behalf of States, urged the Secretary to define the term "financially at risk" as that term applies to the standard under which a SPRE would require an institution to provide for the instruction of students and the retention of records in the event the institution closes.

Discussion: The Secretary believes that a SPRE may view an institution to be financially at risk if it does not satisfy the factors of financial responsibility in § 668.15 of the Student Assistance General Provisions regulations, 34 CFR part 668.

Changes: None.

Standard in Proposed § 667.21(a)(14)

Comments: A number of commenters suggested specific methods for establishing acceptable percentages for student completion and graduation rates, placement rates, withdrawal rates, and licensure examination pass rates.

One commenter opined that it was critical that quantitative measures be consistent within and among all States and believed that the Student-Right-to-Know regulations, when published, will provide a uniform basis for calculating student graduation rates. The commenter recommended a coordinated study by the research community to develop acceptable percentages for the quantified standards and suggested that the implementation of those standards should be delayed for 12 to 18 months pending the results of that study.

Several commenters urged the Secretary to remove the proposed references to the *NOICC Master Crosswalk* in the standard regarding the placement rate of an institution's graduates in occupations related to their educational program. The commenters believed that any method under which the *NOICC Master Crosswalk* could be used to code employment status would be extremely complex and likely to yield false precision at great cost.

Discussion: The Secretary agrees that the Student-Right-to-Know methodology will provide a uniform basis for calculating student graduation rates, and encourages States to develop consistent methods for calculating student withdrawal rates, placement rates, and licensure examination pass rates to reduce burden on institutions. The Secretary acknowledges, however, that some States have developed robust

student information systems, and does not intend to force those States to use specific methodologies for computing rates to measure student outcomes. Therefore, the Secretary disagrees with the commenters who suggest (1) that it is critical that all States adopt the same quantitative measures, or (2) a delay in implementing those measures is warranted.

Finally, the Secretary disagrees that using the *NOICC Master Crosswalk* (Crosswalk) to code employment status would either be complex or costly. The Secretary intends that institutions and SPREs use the Crosswalk as it is currently used by State agencies—as a reference source and guide to evaluate the relationship between an educational program and a job.

Changes: None.

Standard in Proposed § 667.21(a)(11) Governing Market, Job Availability, and Licensing Standards

Comments: A few commenters suggested that the Secretary should expand this standard. The commenters were concerned that the standard does not specify the geographical scope of the labor market information to be provided, nor does it specify that average entry-level earnings should be provided. In addition, the commenters believed that the proposed provision regarding the disclosure of State licensing requirements should be more specific. According to the commenters, some of the most egregious title IV, HEA program abuses have involved institutions that, by enrolling a student in a program that required a State license, implied that the program met, and the student would meet, the State's licensing requirements when in fact the institution failed to provide adequate training to meet those requirements. The commenters suggested that the standard be revised to require an institution to describe in clear and specific terms how its educational program meets, and a student in the program would be able to meet, the relevant State licensing requirements.

Discussion: The Secretary believes that a SPRE's standards in this area will only be acceptable if they are applied in a meaningful manner that meets the demands of these last commenters, but the criterion in these regulations does not have need to be revised to accomplish this purpose. With regard to the comments concerning the geographical scope of labor market information on the determination of entry-level earnings based on averages, the Secretary does not disagree that these might be relevant and valid considerations. The Secretary does not believe, however, that these regulations need to specify all the factors that contribute to making disclosures meaningful. Instead, these factors are best considered when a SPRE consults with the institutions in its State to develop the standard for applying this provision.

Changes: None.

Section 667.22 Disapproval of State Review Standards

Comments: A number of commenters opined that the NPRM would empower the Secretary to exercise control over an institution in a manner that is contrary to section 103(b) of the Department of Education's Organization Act (Pub. L. 98–88). The commenters believed that the Secretary would exercise control over the direction, supervision, or curriculum, program of instruction, administration, or personnel or an institution through the evaluation of State review standards. According to the commenters, given the influence of States over institutions by virtue of State review standards, evaluation of those standards by the Secretary enables the Secretary to exercise the direction, supervision, and control over institutions that is prohibited by law.

Discussion: The Secretary disagrees with the commenters. First, section 494C(d) of the HEA provides that the standards shall be subject to the Secretary's disapproval. Second, under the same statutory provision, these standards must be developed by the SPRE in consultation with institutions in the SPRE's State, and these regulations provide in § 667.22(a) for the Secretary to take that consultation into consideration in determining whether the standards may be disapproved. The Secretary believes that institutional participation in the development of standards does not constitute interference in institutional areas protected by the Department of Education Organization Act.

Changes: None.

Comments: A few commenters writing in response to the request in the NPRM for additional criteria the Secretary should use to evaluate a State's review standards, suggested the following criteria:

(1) An explanation by the State of the rationale for each standard;

(2) If applicable, an explanation of the reasons for deviating from applicable provisions in State law;

(3) Information that is necessary to demonstrate compliance with the review standards, including information not already collected by institutions or other State agencies; and

(4) A provision that would allow an institution to provide directly to the Secretary comments of third parties regarding the State's review standards within a specified time.

Several commenters requested that the Secretary clarify the proposed criterion regarding the use of statistically valid methods and procedures to obtain employment-related data through the conduct of surveys of an institution graduates. A few commenters suggested that the Secretary substitute for that requirement a provision to use "representative sampling." The commenters contended that representative sampling would be a less onerous requirement, especially for smaller institutions.

Discussion: The Secretary thanks the commenters for their suggestions for additional criteria for reviewing standards. The Secretary has decided not to accept the first one because it imposes an unnecessary burden on a State to include a rationale for a standard where the rationale would be self-evident from the standard. However, the Secretary will use the commenters' suggestion as a useful guideline for determining whether to disapprove a particular standard.

The Secretary has decided not to adopt the second suggestion because a State could not adopt a standard that was in violation of its State law. The Secretary has decided not to adopt the third suggestion because that information is not necessary to determining whether a standard is not acceptable. It is left to a SPRE to establish how an institution complies specifically with a standard. Finally, the Secretary did not adopt the fourth suggestion because it is the responsibility of a State in consulting with institutions in the development of those standards, to obtain and consider all relevant comments.

The Secretary considers "representative sampling" to be a valid statistical method for conducting surveys.

Changes: None.

Comments: One commenter writing on behalf of an accrediting commission, urged the Secretary to make a State's review standards subject to third party review. The commenter also recommended this treatment for a SPRE's plan and budget for carrying out the activities under this part. The commenter believed that the statute and the proposed regulations require the Secretary to exercise informed judgment on whether a number of broad standards have been met. Third-party comment would provide valuable input to the Secretary's exercise of informed

judgment. In addition, the commenter offered the view that if the Secretary's key goal for the Program Integrity Triad is to reduce redundancy and promote complimentary input from interested parties, notably other members of the triad and affected institutions, would help the Secretary determine whether State plans, budgets, and standards are in fact complementary to the efforts of the Department and nationally recognized accrediting agencies and not unduly burdensome to institutions. Finally, in the commenters opinion, input from third parties would also help prevent the Secretary from mistake or embarrassment. For example, if the consultative process in a State has been inadequate, it is highly unlikely that the State will reveal the inadequacies in its submission to the Secretary. Institutions that have been adversely affected, however, could point out those deficiencies before Federal funds are wasted on SPRE efforts to apply standards that may later legitimately be challenged. Similarly, nationally recognized accrediting agencies may provide useful information to the Secretary about proposed contracts with other "peer review systems" that are inadequate to the tasks that they would be given. The commenter maintained that according to interested parties the right to review and comment need not be burdensome or time-consuming, and recommended procedures under which the Secretary would provide for and receive third-party comment on a State's review standards, and the SPRE's plans and budgets, before determining whether to approve those standards and plans.

Discussion: The Secretary disagrees strongly that the suggested procedures for third-party comment would not be burdensome or time-consuming. Under the suggested procedures, the Secretary would need to publish in the Federal Register each State's application for funds and each State's review standards, and allow a 30 day comment period and consider that comment, before determining whether to approve a State's application or disapprove a State's standards. These procedures would delay unnecessarily decisions the Secretary must make to ensure proper and timely administration of the SPRE. Moreover, the Secretary believes that inadequate consultation with all affected parties will likely be revealed in deficient standards, which the Secretary will have the authority to review and disapprove.

Changes: None.

Comments: A number of commenters believed that SPREs, not institutions, should be required to calculate student completion rates, withdrawal rates, placement rates, and licensure examination pass rates, and other related data. The commenters contended that the statute does not require or imply that institutions should be required to collect or maintain this information. Other commenters suggested that an institution be required to generate data regarding these rates only when the institution is reviewed by a SPRE.

Discussion: The Secretary disagrees with the commenters. It is clear under the SPRE that referred institutions must satisfy SPRE standards, and must be able to demonstrate that they satisfy those standards.

Changes: None.

Section 676.23 SPRE Reviews of Referred Institutions

Comments: A few commenters believed that a SPRE should be able to conduct an unannounced review of a referred institution if the SPRE has reason to believe that the institution is engaged in fraudulent practices.

Other commenters suggested that, except where fraud is suspected, the Secretary require a SPRE to provide notice to a referred institution before conducting a review of that institution. The commenters argued that advance notice of a SPRE review would enable the institution to prepare adequately for the review, including having required records and personnel at the institution during the review.

Discussion: In general, the Secretary believes strongly that a SPRE is in the best position to determine the actions it should take in carrying out its review responsibilities. If the SPRE determines that an unannounced review of any referred institution is necessary, the SPRE may conduct that review.

Change: None.

Comments: Several commenters suggested that a SPRE be allowed to determine, based on the referral criteria or based on a preliminary review of the institution, whether to conduct a comprehensive review of the institution under all of the State's standards or conduct a more limited review designed to identify and correct certain problems at the institution. The commenters argued that this would provide for efficient use of SPRE resources and reduce the burden on referred institutions.

Discussion: Section 494C(d) of the HEA requires a SPRE, in conducting its review of a referred institution, to determine the institution's compliance with all of the State's standards. The Secretary believes, however, that a SPRE may devise review procedures under which the SPRE decides the manner or level of review required to determine an institution's compliance with each of the State's standards.

Changes: None.

Comments: A few commenters suggested a change in the amount of time a SPRE should have to issue an initial report of its findings to an institution. Some commenters suggested increasing the time from 45 days to 60 days; other commenters suggested decreasing the time to 30 days. Another commenter asked the Secretary to clarify what constitutes the completion of a review and recommended that a SPRE issue its initial report no later than 45 days after it has completed its review of the institutions under all of the State's standards and has received a report from the relevant accrediting agency or peer review system.

Discussion: The Secretary believes that 45 days provides a SPRE with sufficient time to prepare a report of findings. The Secretary considers the 45-day period to begin at the time a SPRE has completed its review of all of the documentation and information it needs in order to prepare the report, including information provided by an accrediting agency or peer review system. The Secretary notes, however, that this does not preclude a SPRE from issuing a partial report of its findings to an institution, if, for example, the SPRE determines that the institution must, or should, take immediate actions in response to the SPRE's findings.

Changes: None.

Comments: Several commenters took issue with the proposal that a SPRE may prescribe a course of action a referred institution must follow to correct a violation of the State's standards. One of the commenters believed that a SPRE should be allowed to recommend, but not prescribe, the course by which an institution brings itself into compliance with State standards. The commenter argued that allowing a SPRE to prescribe a course of action would constitute an inappropriate interference with normal institutional governance and management.

Some commenters were concerned that the Secretary set the wrong tone in the NPRM by suggesting that a SPRE take actions to effect the termination of an institution only when the SPRE finds that the institution "continuously or egregiously violated the State's standards." The commenters believed that SPREs will not be the overzealous terminators that institutions and many others fear; more likely, SPREs will generally be disinclined to take forceful actions against institutions in their State for fear of litigation and other

repercussions that would result from those actions. The commenters urged the Secretary to change the regulations to make clear that in all cases where a referred institution fails to meet a State standard, the SPRE would be required to prescribe a course of action the institution would need follow to correct the violation. The commenters further believed that a SPRE should be required to initiate a proceeding under § 667.25 to effect the termination of an institution, if the institution did not bring itself into compliance with the State standards within a time specified in regulations unless the SPRE extended that time for good cause.

Discussion: The Secretary disagrees strongly with the first series of comments because a SPRE would not be able to enforce the State's standards if it could not require an institution to take the corrective action it determined the institution needed to take to bring the institution into compliance with its standards.

While the Secretary agrees strongly with the commenters that SPREs take consistent and appropriate actions against institutions that fail to comply with the State's standards, the Secretary does not believe that it is necessary or prudent to require a SPRE, on an absolute basis, to prescribe a course of action an institution must follow to correct a violation and bring itself into compliance with State standards, particularly with the State's quantified standards. An institution's compliance with acceptable percentages established for those standards is not inviolate; the acceptable percentage reflects, or should reflect, whether the institution is successfully providing its educational programs, rather than whether the institution should be terminated because it failed to satisfy that percentage. In the NPRM, the Secretary acknowledged that developing such standards will be difficult, and in fairness to institutions, proposed that a SPRE provide an institution the opportunity to present compelling evidence that would demonstrate to the SPRE that its failure to meet a State standard would not warrant any further action by the SPRE. Thus, in § 667.23(c), the Secretary permits the SPRE to determine whether to prescribe a course of action and the nature of that action.

Changes: Section 667.23(d) is revised to make clear that a SPRE must provide an institution the opportunity to present compelling evidence that its failure to satisfy a State standard does not warrant any further action by the SPRE.

Comments: One commenter suggested that the Secretary initiate an emergency action proceeding against an institution based on a SPRE's report of serious problems at an institution.

Discussion: Certainly, the Secretary will examine the findings contained in the SPRE's report and may investigate the matter further to determine whether an emergency action is warranted. If the Secretary determines that an emergency action is warranted, the Secretary initiates that action under 34 CFR part 668, subpart G.

Changes: None.

Comments: Numerous commenters recommended that a SPRE be required to give an institution a minimum number of days to respond to the findings and required actions contained in the SPRE's report to the institution. The commenters recommended that the minimum number be set at 30, 40, 45, 60, or 90 days, or be set by the Secretary in regulations. Most of the commenters argued that the setting of a minimum number of days was needed because the regulations did not provide for an appeal by an institution of the SPRE's findings to the Secretary.

Discussion: The Secretary understands the commenters' concerns that a SPRE could take a precipitous action against an institution by not allowing the institution sufficient time to respond to its report. As stated previously, however, the Secretary believes strongly that a SPRE is in the best position to determine the actions it should take in carrying out its review responsibilities, and, in view of the change made to § 667.23(d), the Secretary has no reason to believe that a SPRE would not afford an institution a reasonable time to respond to its report.

Changes: None.

Comments: Several commenters were concerned that a SPRE might punish an institution by initiating a proceeding to effect the termination of the institution's participation in a title IV, HEA program if the institution did not respond "quickly enough" to the SPRE's request for information, access to the institution, or access to personnel at the institution. The commenters agreed, in principle, that an institution should not be able to thwart the efforts of a SPRE to obtain necessary information by refusing to provide to the SPRE information or access to the institution, but believed that the NPRM provided the SPRE too much authority. The commenters recommended removing two parts of the provision and modifying the third part so that a SPRE would take an action if "* * * the institution exhibits a documented pattern of failure to allow SPRE personnel at the institution or repeated failure to provide SPRE officials with access to documents or records."

A number of commenters believed that, although the proposed provisions were appropriate, some changes should be made. A few commenters argued that a SPRE should view all violations of the State's standards as serious violations and recommended that the term "serious" be removed from the phrase "* * * the SPRE's findings show serious violations of the State's standards."

Discussion: The Secretary does not agree that a SPRE must request repeatedly, and be denied repeatedly, information or access by an institution before taking an action. The Secretary agrees to remove the term "serious," but in doing so does not intend that a SPRE take an action under these provisions for because of a technical violation by an institution.

Changes: Proposed § 667.23(g) is revised to remove the word "serious."

Comments: A number of commenters responded to the request in the NPRM regarding specific areas where SPRE performance standards should be established and how that performance should be evaluated.

Several commenters suggested that the Secretary should consider a SPRE's performance to be seriously deficient if the SPRE exhibits a pattern of (1) allowing reviewed institutions an excessive time to correct violations, or (2) not initiating termination proceedings against institutions for serious violations of the State's standards.

Other commenters suggested that the Secretary evaluate a SPRE's performance based on the SPRE's success in completing its objectives under the plan the SPRE submits annually to the Secretary, and on other areas related to the SPRE compliance with statutory requirements.

Discussion: The Secretary appreciates the commenters suggestions. Based on these suggestions, and upon further review, the Secretary has decided not to promulgate specific SPRE performance criteria because the Secretary already has, or will have, access to all of the information or records pertaining to the suggested criteria. In addition, the Secretary intends that on occasion Department of Education officials and representatives will accompany SPRE personnel in conducting reviews of referred institutions.

Changes: None.

Section 667.24 Peer Review of Institutions

One commenter, writing on behalf of an accrediting commission, objected

strongly to the regulations and views expressed in the NPRM. The commenter argued that if States wish to use peer review systems other than recognized accrediting agencies, those peer review systems should be subject to an approval process established and administered by the Secretary along the lines of the proposal noted in the NPRM preamble. The commenter submitted that ceding the choice of peer review systems to the States would be an abdication of the Secretary's responsibilities and an invitation to abuse. According to the commenter, the goals of Congress for ensuring integrity in the title IV, HEA programs will not be met if, in the future, instances come to light where the quality reviews performed by "peer review systems" on behalf of SPREs have been found to be inadequate, politicized, or abused. In addition, the commenter believed that it could not be assumed that every SPRE would appropriately choose or create peer review systems that will be competent to assess institutions and programs. For these reasons, the commenter urged the Secretary to define in final regulations a "peer review system" and the process by which such systems are to have shown "demonstrated competence in assessing programs." Many commenters echoed this commenter's views.

Several commenters suggested that the Secretary permit a SPRE the use of a "peer review system" only in cases where there is substantial reason to doubt the reliability of the accrediting agency's evaluation of an institution.

A number of commenters agreed that a SPRE should determine the competence of a peer review system and agreed that the criteria listed in the NPRM preamble are appropriate for making that determination. Some of these commenters suggested the following additional criteria:

(1) The system has clear and effective controls against conflicts of interest or the appearance of conflicts of interest; and

(2) The system is independent administratively and financially of the SPRE, and is able to make decisions and recommendations free from undue influence by the SPRE.

Several commenters believed that a SPRE should have the flexibility to determine, on a case-by-case basis, whether to sue the services of an accrediting agency or a peer review system. The commenters offered, however that a SPRE should have defensible procedures in place for selecting a peer review system, and suggested that final regulations require a SPRE to publicize and submit to the Secretary the criteria and procedures it uses to select an appropriate accrediting body or peer review system.

Another commenter suggested that a SPRE should be required to develop its own mechanism to assure that a peer review system meets the same level of quality as a recognized accrediting agency.

Still other commenters believed that a peer system should have the same qualifications and meet the same criteria required of nationally recognized accrediting agencies.

Discussion: The Secretary disagrees with the comments of the first commenter because the Secretary believes SPREs will select competent peer review systems. Moreover, the Secretary disagrees with the suggestion of the second set of commenters because section 494C(d)(15) of the HEA does not contain that limitation.

Based upon the suggestions of the other commenters and further review, the Secretary believes that a peer review system (1) must have an established basis for evaluating educational quality, (2) must have review procedures that include the selection of peer reviewers who have experience in evaluating the types of programs offered by the institution, and (3) must have established policies and procedures that guard against bias in conducting reviews of institutions.

Changes: Proposed § 667.24(a) is revised to require a SPRE to evaluate a peer review system using these criteria described in the discussion above.

Section 667.25 Termination of an Institution's Participation in the Title IV, HEA Programs

Comment: A few commenters were concerned that providing termination authority to a SPRE represented a potential conflict with title VI of the Civil Rights Act of 1964 and perhaps with the equal protection clause of the Constitution of the Untied States.

Discussion: The Secretary disagrees. If the SPRE took an action against a referred institution because the institution violated a SPRE standard and treated that institution in the same manner as it treated other institutions that had the same or similar violations, the SPRE's action would not violate title VI of the Civil Rights Act nor the equal protection clause of the Constitution.

Change: None.

Comment: One commenter questioned whether a SPRE could provide notice to the Secretary to terminate an institution's participation in a title IV, HEA program based solely on findings resulting from a review conducted by a nationally recognized accrediting agency or other peer review system.

Discussion: It depends. First, it depends on whether the institution was a referred institution. Second, it depends on the nature of those accrediting agency or peer review findings. Moreover, before it could recommend termination, the SPRE would have to give the institution a hearing at which the institution could challenge the findings of the accrediting agency or peer review.

Changes: None.

Comments: Many commenters believed strongly that the Secretary should allow an institution to appeal to the Secretary a SPRE's determination that the institution should no longer participate in the title IV, HEA programs. A number of these commenters recommended that the Secretary establish procedures under which the Secretary would review cases where a SPRE's decision was clearly biased.

Discussion: As the Secretary indicated in the NPRM, it is the Secretary's view that section 494C(h)(1) of the HEA does not allow an appeal to the Secretary of the SPRE's termination determination.

Changes: None.

Section 667.26 Due Process Requirements

Comments: Many commenters believed that a State could develop due process procedures that met the minimum requirements outlined in the NPRM, but those procedures would not be adequate or provide for a meaningful appeal. The commenters suggested that final regulations (1) specify the time within which an institution could challenge an adverse action taken by a SPRE, and (2) require a State to provide an institution the opportunity to present its case in a hearing before a third party or impartial hearing official.

Discussion: The Secretary agrees with the commenters' suggestions.

Changes: Section 667.26 is revised to require a State to (1) identify a minimum time within which it will allow an institution to challenge its actions, and (2) provide for a hearing before an impartial official.

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Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions, Campus Safety; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB98

Student Assistance General Provisions; Campus Safety

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations. These regulations are needed to implement statutory changes to the Higher Education Act of 1965, as amended by the Student Right-to-Know and Campus Security Act (Pub. L. 101–542), the Higher Education Technical Amendments of 1991 (Pub. L. 102–26), the Higher Education Amendments of 1992 (Pub. L. 102–325), and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). These regulations require an institution of higher education to disclose information about its campus safety policies and procedures, and statistics concerning whether certain crimes took place on campus. These regulations also make technical changes to Subpart F of the Student Assistance General Provisions regulations, which governs misrepresentation. Encouraging students to pursue high quality postsecondary education is an important element of the National Education Goals; a safe campus environment facilitates such education.

EFFECTIVE DATE: These regulations take effect July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Paula M. Husselmann or Kimberly L. Goto, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Institutions should note that some of the provisions of these regulations may relate to the provisions of the Family Educational Rights and Privacy Act (FERPA). If an institution has questions concerning FERPA, the institution should contact Ellen Campbell at (202) 732–1807.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan (FDSL), State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), Federal Supplemental Educational Opportunity Grant (FSEOG), Presidential Access Scholarship (PAS), and National Early Intervention Scholarship and Partnership (NEISP) programs.

On July 10, 1992 and October 22, 1993 the Secretary published two notices of proposed rulemaking (NPRMs) for 34 CFR part 668 in the **Federal Register** (57 FR 30826–30833 and 58 FR 54902–54905, respectively). Both of these proposed regulations included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The list below summarizes those issues and identifies the pages of the preambles to the NPRMs on which a discussion of those issues may be found. The final regulations to implement the Student Right-to-Know Act, proposals for which were also included in the July 10, 1992 NPRM, are not included in these regulations. With the passage of the Higher Education Amendments of 1992, and its proliferation of completion and graduation rate provisions, it became necessary to write a second NPRM regarding these rates. The Secretary expects to publish the second NPRM this year. The Secretary does not want to delay publication of final regulations regarding campus security and is, therefore, proceeding with this publication separately. As indicated above, here is a summary of proposed issues relating to crime prevention and statistical disclosure:

Addition to student consumer provisions to require the disclosure of an annual security report (57 FR 30828 and 58 FR 54903);

Addition of list of actual disclosures to be made (57 FR 30828 and 58 FR 54903–54904);

Addition of time periods for collection of crime statistics (57 FR 30829 and 58 FR 54904, but superseded by subsequent statutory change reflected in these final regulations); and

Addition of a definition of *campus* for the purpose of section 668.47 of the Student Assistance General Provisions regulations (FR 57 30829 and FR 58 54904).

Substantive Changes Reflected in These Final Regulations Changes Pursuant to the Higher Education Amendments of 1992, Public Law 102–325

Sex Offenses, Forcible or Nonforcible

Section 668.47(a)(12) of the final regulations has been changed to provide for the disclosure of certain policies and procedures, the purpose of which is to prevent forcible and nonforcible sex offenses and address various issues relating to these offenses. Institutions are required to establish campus sexual assault programs to prevent sex offenses and procedures for a victim to follow when a sex offense occurs.

Section 668.47(a)(6)(i) of the final regulations has been changed to provide that for the purpose of disclosing statistics about campus crimes, institutions must compile and disclose statistics on rape for periods of time prior to August 1, 1992 and sex offenses, forcible and nonforcible, for periods of time on or after August 1, 1992. This change reflects an amendment to section 485(f)(1)(F)(ii) of the HEA made by section 486(c)(1) of Public Law 102–325. An institution must use the definition of rape through July 31, 1992 found in the Uniform Crime Reporting (UCR) Handbook. In addition, an institution must use the definitions of forcible and nonforcible sex offenses found in the National Incident-Based Reporting System (NIBRS) Edition of the UCR Handbook for collection of these statistics on or after August 1, 1992.

Reporting of Crime Statistics

Section 668.47(d)(1) of these final regulations, relating to the periods of time for which statistical data on campus crime must be compiled and disclosed, is changed to reflect § 486(c)(3) of Public Law 102–325.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRMs, approximately 300 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRMs follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Section 668.47 Institutional Security Policies and Crime Statistics

Definition of Campus Security Authority

Comments: Several commenters supported the intent of the statute and applauded the efforts to accurately collect and report information on crime and educate consumers, and believe the regulations are a deterrent towards criminal activity. The majority of commenters affirmed their support of the Secretary's removal of the term counselors from the proposed definition of campus security authority.

A number of commenters believed that the proposed regulatory definition of campus security authority struck the appropriate balance between the needs of a crime victim and the need for crime reporting. Other commenters defended the inclusion of deans and residence directors in the proposed definition, maintaining that the definition allows victims to be served properly by reducing accusations concerning interference and coverup of crimes and, most importantly, reducing the risk of someone else becoming a victim of crime.

Many commenters believed that the proposed definition was too broad, particularly because it included deans and residence directors. The commenters offered a variety of reasons for this belief, the most common reason being the belief that a student who is a victim of rape, date rape, or similar crime will often solicit a dean or residence director to help him or her work through the trauma of the event; the victim may decide not to file an official action with the legal authorities. In these instances, the commenters believe the proposed rules could limit the victim's ability to receive immediate assistance and would most likely prolong his or her trauma. Several commenters indicated that deans and residence directors should play a strong role in educating students in security matters and in developing a disciplinary environment that refuses to support criminal behavior.

Several commenters said that the regulations should not define the term campus security authority at all, thereby ensuring maximum institutional flexibility with respect to the reporting of crimes and the allocation of counseling responsibilities. The commenters suggested this course of action, stating that because of the variety of campus administrative structures (size, complexity, structure, and staffing patterns), an all-inclusive definition would be difficult to achieve. Other commenters said that the regulations should define the term but include only specific campus officials, such as the chief law enforcement official on campus or the dean of students, or specific offices, such as the campus security office.

Many commenters specifically objected to including campus officials such as deans and residence directors within the definition of campus security authority. These commenters advanced several arguments: Some commenters said that students should be able to seek confidential counseling from such administrators before deciding whether to report a campus crime and that by requiring these administrators to report possible crimes brought to their attention by students, would undermine the usefulness of the administrators as student advisors and advocates; other commenters noted that deans and residence directors are not trained in criminal law and that requiring them to report possible crimes would probably lead to double-counting of crimes, once by the dean or other campus official and once by the campus police. Several commenters noted that under the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting System, determining the number of crime counts is based on law enforcement investigation and does not include determinations by persons, such as those that might be made by deans and residence directors, who are not law enforcement personnel. Other commenters said it is unethical to require deans and residence directors to report crimes, that doing so is inconsistent with the intent of Congress, and that the proposed definition does not clearly exclude campus religious authorities, such as chaplains.

Many commenters asked for clarification as to how the definition of a campus security authority relates to the Family Educational Rights and Privacy Act (FERPA).

Discussion: Section 485(f)(1)(F) of the HEA requires institutions to disclose statistics of certain campus criminal offenses reported to campus security authorities and local police agencies. As noted in the preamble to the first NPRM, the proposed definition of campus security authority, which the statute does not define, represented an attempt to strike an appropriate balance between the need of individual crime victims for confidential counseling and the need of the broader campus community for prevention and a complete reporting of campus crime.

The Secretary continues to believe that to achieve this balance, and to ensure consistent reporting of crime statistics, it is necessary to define the term campus security authority and to include within the definition a wider range of campus administrators than those exclusively devoted to criminal or security matters. Therefore, the definition of a campus security authority includes a campus law enforcement unit, an individual or organization specified in an institution's statement of campus security policy as the individual or organization to whom students and employees should report criminal offenses, and an official of an institution who has significant responsibility for student and campus activities, but does not have significant counseling responsibilities. The Secretary does not agree that including a broader range of administrators is unethical or unauthorized by the statute; neither is it inappropriate by virtue of their lack of specific training in criminal law, nor is it likely to lead to double-counting. The function of these administrators is not to determine authoritatively whether a crime took place—that is the function of law enforcement professionals working within the criminal justice system—but, with respect to these regulations to report to the appropriate law enforcement personnel, either campus or local police, those allegations of campus crimes that the administrators conclude are made in good faith. These administrators would, of course, be free to seek advice from legal experts before reporting any allegations. In addition, there is no penalty for reporting allegations of campus crime to the appropriate law enforcement personnel if those allegations turn out to be baseless. If the law enforcement personnel, upon further investigation, conclude that the allegations reported are not substantiated by the facts or the law, no campus crime need be disclosed as a statistic.

Because of the wide variety of institutions participating in the Title IV, HEA programs, the Secretary acknowledges that it is not appropriate to identify particular administrators, such as deans and residence directors, by their titles as being either included or excluded from the definition of campus security authority. Instead, the identifications must be made in terms of the functions of particular administrators. Institutions are expected to determine which officials have significant responsibility for student and campus activities and do not have significant counseling responsibilities for the purpose of this definition and to make this information known to the campus community. The Secretary notes that it was never the intent of the

proposed rule to include chaplains within the meaning of the term campus security authority.

Records created and maintained by a campus law enforcement unit, for the purpose of law enforcement, are not education records and are not protected from disclosure by FERPA. The definition of campus security authority also includes (1) an individual or organization specified in an institution's statement of campus security policy as the individual or organization to whom students and employees should report criminal offenses; and (2) an official of an institution who has significant responsibility for student and campus activities, but does not have significant counseling responsibilities.

Information on crimes reported to these officials could be included in records classified as protected from non-consensual disclosure under FERPA regulations. However, FERPA does not prohibit the disclosure of statistical, non-personally identifiable information. The Secretary does not interpret FERPA to prevent compliance with the timely warning provision, as in a case of an emergency involving the safety of others—even where the identity of an individual may be disclosed.

Changes: The Secretary has revised the definition of campus security authority to include, in addition to those individuals or organizations specified by the institution's statement of campus security policy as those to whom criminal offenses should be reported, other officials of the institution who have significant responsibility for student and campus activities, but only if those officials do not have significant counseling responsibilities. The definition has also been revised expressly to include a campus law enforcement unit.

Victim's Rights

Comments: A number of commenters said that victims should have the option of consulting with student affairs personnel before deciding whether or not to report the occurrence of a crime. Some commenters said that the victim of a crime on campus should be allowed to report the crime anonymously.

Discussion: Under these final regulations, victims of a crime on campus remain free to seek confidential counseling from campus administrators who have significant counseling responsibilities. Section 485(f)(1)(F) of the HEA and these regulations require the statistical reporting of crimes to the campus community, not personally identifiable accounts of crimes. A victim who reports a crime to a campus security authority may, of course, request anonymity to the extent practicable and permitted by local law.

Changes: None.

Monitoring Crimes On-Campus and Off-Campus

Comments: A few commenters requested that the Secretary require institutions to monitor crimes that take place in areas other than those proposed in the NPRM. For example, the commenters believe it is within the spirit of the statute to monitor crime on public and private property that is not owned or controlled by an institution, but that is frequented by the institution's students. This recommendation would include the neighborhood surrounding the campus. One commenter indicated that there are many unidentifiable properties within the institution's area that are controlled by recognized organizations, but that the properties of the organizations are not officially recognized by the institution.

Discussion: Neither the HEA nor these regulations require institutions to gather data and report to the campus community about off-campus crime. Section 485(f)(1)(F) of the HEA and these regulations require institutions to disclose statistics about particular crimes that occur on campus. The statute includes in the definition of "campus" any building or property owned or controlled by student organizations recognized by the institution. Institutions should note, however, that an institution can be considered to control certain space that may be owned by a third party. For example, some institutions rent space in building owned by a third party; the institution controls the space that it occupies and that space is covered under these provisions of the HEA.

Changes: None.

Timely Warning to the Campus Community

Comments: A few commenters requested a clear definition of "timely reports" for the purpose of section 485(f)(3) of the HEA and these regulations, which require an institution to make timely reports to the campus community on crimes that are reported to campus security authorities or local police and that are considered a threat to other students and employees. Some commenters believed that timely warnings made by those who are not enforcement personnel could jeopardize a criminal investigation and allow a suspect to be released. Other commenters believe that the campus community must be informed of these threats and these provisions allow the law enforcement authorities to receive the evidence to build a case.

Discussion: The Secretary does not believe that a definition of "timely reports" is necessary or warranted. Rather, the Secretary believes that timely reporting to the campus community for this purpose must be decided on a case-by-case basis in light of all the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community, and the possible risk of compromising law enforcement efforts. Campus security authorities should consult the local law enforcement agency for guidance on how and when to release "timely reports" to the campus community.

Changes: None.

Coordination With State Requirements

Comment: One commenter said that State and Federal requirements pertaining to the disclosure of crime statistics by institutions should be coordinated with respect to both the types of crimes reported and the dates for disclosure.

Discussion: The Secretary supports coordinated efforts to disclose all required statistical disclosures to the extent they are consistent with specific requirements of section 485(f) of the HEA and these regulations.

Changes: None.

Distribution of Annual Security Report

Comments: One commenter requested clarification as to the means of distribution of the annual security report. The commenter wondered whether the institution would be required to mail the security report to current students and employees or could simply notify them about how to obtain the security report. Another commenter requested the Secretary to identify those to whom an annual security report is given only upon request.

Discussion: These regulations require that the annual security report be distributed to all current students and employees, and to any prospective student and employee upon request. As defined in § 668.41(b), a prospective student is one who has requested information concerning admission to the institution. However, because of the importance of this information regarding personal safety, the Secretary believes that any person requesting information on admission should be notified of the availability of the report, given a summary of the report, and given an opportunity to request it. A prospective employee requesting an application for employment from the

institution or information about employment at the institution should be treated in the same manner as a prospective student. The Secretary agrees that these regulations need to clarify how the report is distributed.

Changes: The regulations have been changed to clarify the methods of distribution that are to be used to ensure individual delivery of the security report. An institution may choose to distribute the report by any of the following means: (1) Directly mailing of the report to each individual through the U.S. Postal Service, campus mail, or computer network; or (2) providing the report directly to each individual (by hand-delivery). Institutions may include the security report as a part of an institutional publication that is distributed to each individual, such as a catalog, student handbook, registration materials, or tuition bill. An institution must provide prospective students and employees information about the availability of the report and a summary of the information in it.

Reporting Crime Data

Comments: Some commenters asked if there is a form or format for reporting and disclosing crime data.

Discussion: With respect to a prescribed format or form on which to disclose and report crime statistics, the Secretary notes that an institution may voluntarily participate in the Uniform Crime Reporting (UCR) System of the FBI. In this system, there are prescribed forms for the reporting of crime. The Secretary notes that while the HEA does not mandate participation in the UCR System, the HEA does, however, require use of the UCR definitions in determining whether a crime has been committed.

Changes: None.

Institutional Security Policies

Comments: Several commenters asked whether an institution that does not have programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses is required to establish these programs itself. They asked whether an institution could use as educators, in those areas, personnel who are experts in their respective fields.

Discussion: Section 485(f) of the HEA requires an institution to provide education programs to promote the awareness of rape, acquaintance rape, and other sex offenses. An institution may contract with experts in these areas, such as rape crisis intervention experts, local law enforcement officials, and social service personnel to provide training to students and staff.

Changes: None.

Comments: Two commenters questioned the change in terminology from sexual assault to sex offense with regard to procedures students should follow if a sex offense occurs. Two commenters were concerned over the issue of preserving evidence of a criminal offense: one commenter believed that this requirement could place the institution in the position of interpreting laws regarding evidence. The institutions asked for guidance with respect to preserving evidence. Two commenters agreed that a student should retain the right, under the regulations, to decide whether to report a sex offense.

Discussion: The Secretary changed the term sexual assault to sex offense to conform with the statutory provision requiring institutions to use the definitions of the FBI's UCR System; forcible and nonforcible sex offenses are defined. During negotiated rulemaking sessions with the academic community, many non-Federal negotiators recommended that institutions be required to define what is meant by "preserving evidence". The Secretary urges institutions to consult with their campus security officials, local law enforcement officials, and the local prosecutor's office in addressing what constitutes the preservation of evidence. The Secretary further encourages institutions to develop working relationships with the emergency rooms of local hospitals and local rape crisis programs.

Changes: None.

Comments: One commenter asked to what extent an institution is required to assist a student in notifying proper authorities of the occurrence of a sex offense, if the student requests the institution's assistance.

Discussion: The Secretary expects an institution to accommodate a victim's request for assistance reasonably.

Changes: None.

Comments: Fifteen commenters addressed the requirement for an institution to notify students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for such changes, if changes are requested by the victim and are reasonably available. Some of the commenters recommended that this should apply only to institutions that have control over on- and off-campus housing. Some community colleges indicated that they do not have the experience or resources to handle such a request. Some commenters were concerned that this requirement could impose an unlimited liability on institutions. Some of the commenters asked the Secretary to specify what constitutes acceptable accommodation by an institution.

Discussion: With regard to those commenters who expressed concern over potential legal liability and those who wish to limit the scope of this provision to institutions that control housing, it is important to recognize that these requirements provide an institution flexibility. Moreover, section 485(f)(7)(c) of the HEA provides that no private right of action is created by this statute. A change to accommodate a victim must be reasonably available. If a change of living or academic situation requested by a victim is unreasonable, an institution is not required to make the change. As examples, an institution could allow a victim out of a housing contract with the institution so that the student may pursue off-campus housing; on the other hand, if would not be reasonable to expect the institution to pay for the rental of a private apartment for the student. The Secretary does not believe that it is useful to list in these regulations all examples of acceptable accommodation. Institutions are expected to make reasonable efforts at acceptable accommodation.

Changes: None.

Comments: Four commenters expressed concern that the Secretary has not specified how an institution must ensure due process for the accused in a campus disciplinary proceeding. The commenters were concerned that the institution not take punitive action against the accused until all of the evidence is weighed and there is a conviction.

Discussion: The commenters are correct that the HEA does not provide due process requirements under these provisions; due process is a matter of local law and other requirements. The purpose of this provision is to provide disclosure of an institution's disciplinary procedures with certain minimum requirements.

Changes: None.

Other Comments

Comments: A few commenters warned that the distribution of campus security policies could be dangerous because criminal elements might use the information provided to evade detection and plan further crimes.

Discussion: The Secretary expects institutions to consider the needs of the campus community for which they are providing a statement of campus security policies and to be judicious in the selection of information to be provided. The Secretary does not believe the required disclosures will aid

crime. Rather, the disclosures will serve to discourage crime on campus.

Changes: None.

Comments: A few commenters said the statistics disclosed of campus crimes should represent only verifiable crimes or convictions.

Discussion: The occurrence of a crime on campus need not be disclosed to students and staff under these regulations unless the appropriate law enforcement officials conclude that the crime did occur with the same degree of certainty they would require for purposes of reporting under the FBI's Uniform Crime Reporting System. Convictions, however, are not required, because an acquittal means only that a specific defendant did not commit the crime charged, not that a crime did not occur. For information concerning "Unfounded Complaints" an institution should refer to the UCR Handbook. The Secretary provided this clarification as a guide to disclosure requirements. It is in no way to be interpreted as discouraging the reporting of crime to the proper law enforcement agencies.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM. (Approved by the Office of Management and Budget under control number 1840–0537)

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal government in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.032 Federal Consolidation Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.226 Income Contingent Loan Program; 84.268 Federal Direct Student Loan Program; and 84.27 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance number for the Presidential Access Scholarship Program has not been assigned.)

Dated: April 22, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—[AMENDED]

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.43 is amended by removing the word "and" at the end of paragraph (c)(4); removing the period in paragraph (c)(5) and adding, in its place, the term "; and"; and adding a new paragraph (c)(6) to read as follows:

§ 668.43 Financial assistance information.

* * * * *

(c) * * *

(6) The institution shall provide and collect exit counseling information as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program, by 34 CFR 685.303 for borrowers under the Federal Direct Student Loan Program, and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan and Federal SLS programs.

* * * * *

3. Section 668.44 is amended by removing the word "and" at the end of paragraph (a)(6); removing the period at the end of paragraph (a)(7) and adding, in its place, the term "; and"; and adding a new paragraph (a)(8) to read as follows:

§ 668.44 Institutional information.

(a) * * *

(8) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the Title IV, HEA programs.

* * * * *

§ 668.46 [Reserved]

4. Section 668.46 is reserved.

5. A new § 668.47 is added to subpart D to read as follows:

§ 668.47 Institutional security policies and crime statistics.

(a) An institution shall, by September 1, 1992, and by September 1 of each year thereafter, publish and distribute, through appropriate publications and mailings, an annual security report that contains, at a minimum, the following information:

(1) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to those reports, including policies for making timely reports to members of the campus community regarding the occurrence of crimes described in paragraph (a)(6) of this section. This statement shall include a list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (a)(6) for the purpose of making timely reports.

(2) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(3) A statement of current policies concerning campus law enforcement, including—

(i) The enforcement authority of security personnel, including their working relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals; and

(ii) Policies that encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(4) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(5) A description of programs designed to inform students and employees about the prevention of crimes.

(6)(i) Statistics concerning the occurrence on campus of the following criminal offenses reported to local police agencies and to any official of the institution who has significant responsibility for student and campus activities:

(A) Murder.

(B) Rape (prior to August 1, 1992) or sex offenses, forcible or nonforcible (on or after August 1, 1992).

(C) Robbery.

(D) Aggravated assault.

(E) Burglary.

(F) Motor-vehicle theft; and

(ii) Statistics concerning the criminal offenses of murder, forcible rape, and aggravated assault, as listed in paragraph (a)(6)(i) of this section, that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 U.S.C. 534).

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations recognized by the institution, including student organizations with off-campus housing facilities.

(8)(i) Statistics concerning the number of arrests for the following crimes occurring on campus:

(A) Liquor-law violations.

(B) Drug-abuse violations.

(C) Weapons possessions.

(ii) Statistics concerning those crimes listed in paragraph (a)(8)(i) of this section that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 U.S.C. 534).

(9) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(10) A statement of policy regarding the possession, use and sale of illegal drugs and enforcement of Federal and State drug laws.

(11) A description of any drug or alcohol-abuse education programs, as required under section 1213 of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 1213 of the HEA.

(12) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify proper law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this subsection does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(b) An institution shall distribute the security report required by paragraph (a) of this section annually to all—

(1) Current and prospective students and employees by appropriate publication and mailings, through—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or computer network; and

(ii) Publications provided directly to each individual; and

(2) Prospective students as defined in § 668.41(b) and prospective employees as defined in paragraph (f) of this section, upon request, provided that such individuals are informed of the availability of the security report, given a summary of its contents, and given the opportunity to request a copy.

(c) An institution shall comply separately with the requirements of this section for each campus. A branch, school, or administrative division within an institution that is not within a reasonably contiguous geographic area with the institution's main campus is considered to be a separate campus.

(d)(1)(i) An institution's first annual security report (due September 1, 1992) must contain the statistics described in paragraph (a)(6) of this section covering the period January 1, 1991, through December 31, 1991, and the two preceding calendar years, or the portion thereof for which data are reasonably available. The first annual security report must contain those statistics covering at least the period from August 1, 1991, through July 31, 1992.

(ii) An institution's second and third annual security reports (due September 1, 1993 and September 1, 1994, respectively) must contain the statistics described in paragraph (a)(6) of this section covering the most recent calendar year and the two preceding calendar years, or the portion thereof for which data are reasonably available. The second annual security report must contain those statistics covering at least the period from August 1, 1991, through December 31, 1991, and calendar year 1992. The third annual security report must contain those statistics covering at least the period from August 1, 1991, through December 31, 1991, and calendar years 1992 and 1993.

(iii) An institution's annual security report due September 1, 1995, and each subsequent report, must contain the statistics described in paragraph (a)(6) of this section covering the three calendar years preceding the year in which the report is disclosed.

(iv) In each annual security report due on or after September 1, 1993, September 1, 1994, September 1, 1995, an institution must, in accordance with paragraphs (d)(1) (ii) and (iii) of this section, report statistics covering rape for periods of time prior to August 1, 1992, and statistics concerning sex

offenses, forcible or nonforcible, for periods of time on or after August 1, 1992.

(v) In all subsequent annual security reports, an institution shall report statistics for sex offenses, forcible and nonforcible.

(2)(i) An institution's first annual security report (due September 1, 1992) must contain the statistics described in paragraph (a)(8) of this section covering the period January 1, 1991, through December 31, 1991, or the portion thereof for which those statistics are available. The first annual security report must contain that data covering at least the period August 1, 1991, through December 31, 1991.

(ii) An institution's second annual security report (due September 1, 1993) and each subsequent report must contain the statistics described in paragraph (a)(8) of this section, covering the calendar year preceding the year during which the report is to be disclosed.

(3) An institution shall compile crime statistics required under paragraph (a) (6) and (8) of this section in accordance with the definitions used in the Federal Bureau of Investigation's Uniform Crime Reporting Program as provided in Appendix E to this part.

(4) Upon the request of the Secretary, an institution must submit to the Secretary the statistics required by paragraphs (a)(6) and (a)(8) of this section.

(e) An institution shall, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(1) Described in paragraph (a)(6) of this section;

(2) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (a)(1) of this section or local police agencies; and

(3) Considered by the institution to represent a threat to students and employees.

(f) The following definitions apply to this section:

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes.

(2) Any building or property owned or controlled by a student organization recognized by the institution.

(3) Any building or property controlled by the institution, but owned by a third-party.

Campus security authority: (1) A campus law enforcement unit.

(2) An individual or organization specified in an institution's statement of campus security policy as the individual or organization to whom students and employees should report criminal offenses.

(3) An official of an institution who has significant responsibility for student and campus activities, but does not have significant counseling responsibilities.

Prospective employee: An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning employment with the institution.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 534, 1092, and 1232g)

6. Section 668.72 is amended by revising paragraph (l) to read as follows:

§ 668.72 Nature of educational program.

* * * * *

(l) Any matters required to be disclosed to prospective students under §§ 668.44 and 668.47 of this part.

7. A new Appendix E is added to part 668 to read as follows:

Appendix E to Part 668: Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.47, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder, robbery, aggravated assault, burglary, motor vehicle theft, weapon law violations, drug abuse violations and liquor law violations* are excerpted from the *Uniform Crime Reporting Handbook*. The definitions of forcible and nonforcible sex offenses are excerpted from the National Incident-Based Reporting System Edition of the *Uniform Crime Reporting Handbook.*

Crime Definitions From the Uniform Crime Reporting Handbook

Murder

The willful (nonnegligent) killing of one human being by another.

Robbery

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated Assault

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

Burglary

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft

The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)

Weapon Law Violations

The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

Drug Abuse Violations

Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, benzedrine).

Liquor Law Violations

The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

Sex Offenses Definitions From the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program

Sex Offenses—Forcible

Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

A. *Forcible Rape*—The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

B. *Forcible Sodomy*—Oral or anal sexual intercourse with another person, forcibly

and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

C. *Sexual Assault With An Object*—The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

D. *Forcible Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

Sex Offenses—Nonforcible

Unlawful, nonforcible sexual intercourse.

A. *Incest*—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

B. *Statutory Rape*—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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Friday
April 29, 1994

Part VIII

Department of Education

34 CFR Parts 668, 682, and 690

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program; Interim Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 690

RIN 1840–AB85 and 1840–AB80

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Interim final regulations with invitation for comment.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations, the Federal Family Education Loan (FFEL) Program regulations, and the Federal Pell Grant Program regulations to implement changes in the Higher Education Act of 1965, as amended (HEA), and to improve the monitoring and accountability of institutions and third-party servicers participating in the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs). These changes also establish standards of administrative and financial responsibility for third-party servicers that administer any aspect of a guaranty agency's or lender's participation in the FFEL programs.

These regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. The Secretary invites comment on these regulations.

DATES: *Effective Date:* These regulations take effect July 1, 1994 with the exception of §§ 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83. Sections 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact persons. A document announcing the effective date will be published in the **Federal Register**.

Comment Date: Comments on these interim final regulations must be received on or before June 20, 1994.

ADDRESSES: All comments concerning these regulations should be addressed to Greg Allen and Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5343.

FOR FURTHER INFORMATION CONTACT: Greg Allen or Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5343. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 6 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1992, Pub. L. 102–325, (the Amendments of 1992) and the Higher Education Technical Amendments of 1993, Pub. L. 103–208 (the Technical Amendments of 1993) amended the HEA in several areas relating to the participation of institutions in the Title IV, HEA programs. Further, the Amendments of 1992 amended the HEA to expand the Secretary's authority to regulate the activities of those individuals and organizations now called *third-party servicers*. The Student Assistance General Provisions regulations contain requirements that are common to educational institutions that participate in the Title IV, HEA programs.

On February 28, 1994, the Secretary published a Notice of Proposed Rulemaking (NPRM) for parts 668 and 690 in the **Federal Register** (59 FR 9526). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found:

The Secretary proposed to clarify the terms used in the statutory definition of *academic year* (pages 9529–9530);

The Secretary proposed a definition of an eligible program to implement statutory requirements, including requirements for "short-term" programs (at least 300 but less than 600 clock hours) that would be eligible for the FFEL programs only. The Secretary proposed methodologies for the measurement of completion and placement rates for short-term programs, as required by the statute. Also in accordance with the statute, the Secretary proposed further provisions to evaluate the quality of short-term programs (pages 9530–9531);

The Secretary proposed to add two new sections to codify procedures with regard to applications to participate initially or to continue to participate in a Title IV, HEA program and procedures by which the Secretary certifies that an institution meets the standards in subpart B of these regulations and accordingly may participate in a Title IV, HEA program. The Secretary proposed procedures to codify new statutory provisions governing provisional certification procedures for participation in a Title IV, HEA program (pages 9533–9536);

The Secretary proposed to amend the regulations governing program participation agreements to include numerous new provisions added by the Amendments of 1992 and provisions previously prescribed by the HEA but not specifically spelled out in the regulations. The Secretary also proposed provisions to amend the regulations governing program participation agreements (pages 9536–9539);

The Secretary proposed significant changes to the section governing the evaluation of an institution's financial responsibility. The Secretary proposed to strengthen the factors used to evaluate an institution's financial responsibility and to reflect statutory changes (pages 9539–9544);

The Secretary proposed to strengthen and expand the standards of administrative capability for participating institutions, addressing areas previously not regulated or for which there were only guidelines (pages 9544–9549);

The Secretary proposed to amend the provisions governing default reduction measures to reflect statutory changes made by the Amendments of 1992 and current departmental practices. The provisions in the Technical Amendments of 1993 that address institutional appeals of cohort default rates were not included in the NPRM (pages 9549–9551);

The Secretary proposed to clarify the terms used in the statutory definition of a fair and equitable refund policy (pages 9551–9556);

The Secretary proposed to implement the statutory requirement that institutions have annual compliance audits. The Secretary proposed to extend the audit requirements to foreign institutions (pages 9556–9557); and

The Secretary proposed to amend the Federal Pell Grant Program regulations to implement section 487(c)(7) of the HEA that provides that an institution may offset the amount of Title IV, HEA program disbursements against liabilities or may receive reimbursement from the Department for those amounts

if, in the course of any audit conducted after December 31, 1988, the Department discovers or is informed of any Title IV, HEA program assistance (specifically, Federal Pell Grant Program funds) that an institution has provided to its students in accordance with program requirements, but the institution has not previously received credit or reimbursement for these disbursements (page 9558).

On February 17, 1994, the Secretary published an NPRM proposing amendments to parts 668 and 682 in the Federal Register (59 FR 8044). The NPRM included a discussion of the major issues involved in the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found:

The Secretary proposed a definition of *third-party servicer* as applicable to those individuals or organizations that contract with an institution to administer any aspect of the institution's participation in the Title IV, HEA programs (page 8045);

The Secretary proposed to expand the factors of financial responsibility of an institution to take into consideration substantial control over both institutions and third-party servicers (pages 8046–8047);

The Secretary proposed annual audit requirements for third-party servicers as necessary to implement statutory provisions under the Amendments of 1992 (pages 8047–8048);

The Secretary proposed notification requirements for third-party servicers against which the Secretary has assessed a liability for a violation of a Title IV, HEA program violation (pages 8048–8049);

The Secretary proposed to create a new section to codify contract requirements between institutions and third-party servicers. As one of the conditions in the contract, a third-party servicer would be required to assume joint and several liability with an institution that the servicer contracts with for any violation by the servicer of any Title IV, HEA program requirement (pages 8049–8050);

The Secretary proposed to apply against a third-party servicer the sanctions under subpart G of the Student Assistance General Provisions that currently solely apply to institutions for any violation of a Title IV, HEA program requirement (pages 8050–8051);

The Secretary proposed to apply the fiduciary standards that currently only apply to institutions to third-party servicers so that third-party servicers would be required to act at all times with the competency necessary to qualify them as a fiduciary (page 8051);

The Secretary proposed a definition of *third-party servicer* applicable to those individuals or organizations that contract with a lender or guarantee agency to administer any aspect of the lender's or guarantee agency's participation in the FFEL programs (page 8055);

The Secretary proposed to require a third-party servicer that contracts with a lender or guaranty agency to assume joint and several liability for any violation of any FFEL program requirement or applicable statutory requirement. Collection of liabilities from the violation would be collected first from the lender or guaranty agency (page 8055–8056); and

The Secretary proposed a new section to codify Federal requirements for third-party servicers that contract with lenders or guaranty agencies. A third-party servicer would be required to meet certain standards of financial responsibility and administrative capability to be considered eligible to contract with a lender or guaranty agency. In addition, this section would require a third-party servicer to have performed an annual audit of the servicer's administration of a lender's or guaranty agency's participation in the FFEL programs (page 8056);

Program Integrity Triad

In order to approve a postsecondary education institution to participate in the student financial assistance programs authorized under Title IV of the HEA (referred to as "Title IV, HEA programs") and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and many other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an education program beyond the secondary level in the State in which it is located. In addition, to participate in the Title IV, HEA programs, the institution must be certified by the Secretary as administratively capable and financially responsible. Thus, the HEA provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to Title IV, HEA programs is opened only to those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad."

While the concept of a triad of entities responsible for gatekeeping has had a long history, originating in 1952, the Higher Education Amendments of 1992, Pub. L. 102–325, significantly increased the gatekeeping responsibilities of each member of the triad. Specifically, Congress amended the HEA to provide for a new part H of Title IV entitled "Program Integrity Triad." Under the new part H, the requirements that accrediting bodies must meet if they are to be recognized by the Secretary as "gatekeepers" for Title IV or other Federal purposes are specified in detail. Part H also provides a new oversight responsibility for States: the State Postsecondary Review Program. Altogether, part H establishes a set of responsibilities for accrediting agencies, States, and the Secretary that creates a stronger and more coordinated evaluation of institutions that participate, or wish to participate, in the Title IV, HEA programs.

The Secretary recognizes that the approach to significantly increased gatekeeping activity outlined in the statute for the three members of the triad is a new one. This approach will require leadership in both implementation and evaluation if it is to achieve the effectiveness that Congress intended. The Secretary will take steps to assure that the various responsibilities of the triad members are carried out in a manner that, in fact, results in the identification of institutions that should not participate in the Title IV, HEA programs, on the basis of either the quality of education they offer or their inability to handle program funds. At the same time, the Secretary is committed to carrying out the responsibility for coordinating the activities of the triad members that are inherent in the statute in a manner that causes the least burden to institutions participating in the Title IV, HEA programs.

To these ends, the Secretary is committed to effective management of the gatekeeping function. The Secretary will review carefully the applications of accrediting bodies and the standards and operating plans proposed by State Postsecondary Review Entities (SPREs) under the State Postsecondary Review Program to insure that they meet the requirements of the statute and these regulations and will enable these triad agencies to fulfill their statutory

purposes. The Secretary will also place a priority on the completion of the "Postsecondary Education Participation System," the Department's new integrated data base, which will contain the information that the Secretary generates in the course of the Secretary's oversight of institutions participating in Title IV, HEA programs. The Secretary will use the data base to inform accrediting bodies and SPREs of actions taken by the Secretary so that they may in turn carry out their responsibilities. This expanded data base is also critical to the Secretary's effective selection of institutions for program review.

Monitoring the results of the gatekeeping process is a very important key to effective management. The Secretary will evaluate the activities of accrediting agencies, SPREs, and the Department to determine their effectiveness in improving the integrity of institutions participating in Title IV programs and will take such steps as may be indicated to improve the results. Finally, as provided in the statute, the Secretary will seek the advice and counsel of the National Advisory Committee on Institutional Quality and Integrity in evaluating the effectiveness of the triad.

The Secretary believes that the approach best suited to achieving the objectives of the statute is a complementary one, with each member of the triad focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. States, in addition to providing the legal authority to operate within the state required for participation in the Title IV, HEA programs, will review institutions that meet certain statutory review criteria related to institutional performance in the Title IV, HEA programs. The focus of the Secretary's evaluation of institutions is on the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs.

While the functions and responsibilities of each of the triad members are generally different, the statute does require, in some instances, that all members of the triad evaluate similar areas. For the most part, the principle of complementary functions will lead to the members evaluating those same areas from different perspectives for different purposes. For example, all three of the triad members are required to examine the finances of an institution. If each looks at financial strength from a perspective complementary to that of the others, accrediting agencies would focus principally on the capacity of the institution to continue to offer programs at a level of quality sufficient to meet accrediting agency standards and to fulfill the institution's mission over a 5–10 year period of accreditation. The emphasis of a review by a SPRE would be on whether or not the institution possesses the full range of resources needed to serve students currently attending the institution. The Secretary's responsibilities focus on the institution's finances in light of its ability to provide the services described in its official publications and statements, to provide the administrative resources necessary to comply with its Title IV, HEA program responsibilities, and to meet all of its financial obligations, including, but not limited to, refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

Despite the Secretary's efforts to encourage complementary functions for each of the triad members, it is theoretically possible that, in some instances, an institution could be subject to three different standards regulating the same area of operation. For this reason, where a Title IV standard has been promulgated at the Federal level, the Secretary expects accrediting agencies and States to take this into account in establishing their own standards to insure that varying standards do not pose an unnecessary burden on institutions. It is also important that accrediting agencies and States do not impose any standard that is weaker than comparable Title IV, HEA program standards. The Secretary believes coordination of this is a federal responsibility.

In view of the complementary approach to the functions of the triad members, the Secretary believes, for example, that institutions should not have to develop different methodologies to provide data that the three members of the triad may require. The Secretary also believes that, to the extent feasible, any other requests for data about the institution, its students, or its graduates should rely on information already in the institution's possession. To that end, the Secretary expects accrediting agencies and States either to accept student data based on the methodology that will be specified in the regulations governing "Student Right to Know," also mandated by the Higher Education Amendments of 1992, or, where the institution may have other methodologies for calculating data, such as a system designed to provide data to a State higher education commission or other State agency, to accept data in the format already being used by the institution. Similarly, the Secretary expects accrediting agencies and SPREs to use the audited financial statements institutions are now required to provide to the Secretary on an annual basis to the extent those statements are compatible with the nature of the reviews conducted under their respective standards.

The Secretary also recognizes that other Federal agencies, such as the Department of Labor and the Veterans Administration, also regulate institutions in some areas that are similar to those included in part H. The suggestion has been made that the Secretary should promulgate Federal standards in the areas of overlap so that institutions would not be subject to varying standards developed by other Federal agencies and the triad members. However, the Secretary interprets part H as permitting States and accrediting agencies to establish their own standards, as opposed to using a Federal standard, and also believes that this is the most effective approach. In addition, it is not clear how the requirements of the different agencies are compatible with the requirements of part H. The purposes of these programs administered by other agencies may be very different. As a result, the Secretary has not pursued this alternative. The Secretary does believe that it would be useful to explore how the varying requirements of other Federal agencies that are similar to those of part H might be coordinated to reduce any burden on institutions and will initiate such exploration.

The Secretary believes that, where possible, data developed at the national level should be made available to institutions, as well as to States and accrediting agencies to assist them in carrying out their responsibilities under part H. In particular, data concerning labor markets and compensation for specific fields and information concerning graduation and withdrawal rates at various types of institutions may be helpful to both triad members and institutions. The Secretary will facilitate the development of this type of information and, where possible under the auspices of the Department, will coordinate the development of data that will be helpful to institutions and the triad.

Finally, as part of the commitment to providing leadership to the triad, the Secretary will convene representatives of the triad members and institutions to exchange information about the gatekeeping process and to discuss how the triad is functioning, both in

identifying institutions whose performance is questionable and in reporting requirements that have proven to be unreasonably burdensome. The Secretary invites comments concerning the functioning of the triad, as it is implemented through these and other regulations governed by part H. The Secretary will seek improvement, where possible, within existing regulations and will propose modifications to regulations and to the statute itself if experience indicates those changes are both necessary to achieve effective gatekeeping, with minimal burden, and compatible with the need to maintain, and assure the public of, the integrity of the Title IV, HEA programs.

Substantive Changes to the NPRMs

Part 668—Student Assistance General Provisions

Subpart A—General

Section 668.2 General Definitions

Academic Year. In the February 28, 1994 NPRM, the Secretary requested comment on how to implement the technical amendment that provided that the Secretary may reduce, for good cause on a case-by-case basis, the required minimum of 30 weeks of instructional time to not less than 26 weeks of instructional time in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree. The Secretary did not propose specific criteria to implement this technical amendment in the February 28, 1994 NPRM, but instead requested comments on a definition of "good cause" and requested comments on ways of implementing this provision that addressed the Secretary's concern that reductions in the award year would encourage many institutions to seek that treatment routinely. After reviewing public comments on defining good cause, and developing safeguards to discourage routine requests for reductions in the academic year, the Secretary has implemented this technical amendment in new § 668.3.

Under this section, for the purpose of awarding Title IV, HEA funds, the Secretary may reduce the length of an academic year for an institution that submits a written request to the Secretary. Section 668.3 provides for a two-year "phase-in" period for institutions that are currently participating, have an academic year of 26–29 weeks, and meet the other applicable standards of the section. The Secretary will consider all other requests for a reduction in the minimum number of weeks of instructional time to not less than 26 weeks on a case-by-case basis in accordance with the requirements of § 668.3. Section 668.3 is discussed in greater detail in the section of the *Analysis of Comments and Changes* that addressed the definition of an *academic year* (§ 668.2).

In the February 28, 1994 NPRM, the Secretary requested comment on how to address an abuse of the definition of an *academic year* whereby an institution that has programs that are measured in credit hours without terms could claim that it meets the requirements for the minimum amount of work to be performed by a full-time student over an academic year by giving a full-time student a minimal amount of instruction over a 30-week (or more) period, which the institution claims to be equivalent to 24 semester or 36 quarter hours. The Secretary requested comment on whether a minimum full-time workload for students enrolled in these educational programs should be established to address this abuse. Several commenters agreed that this abuse should be addressed. However, rather than changing the proposed definition of full-time student to require measurement of student workloads, a modification has been made to require that, for educational programs using credit hours, but not using a semester, trimester, or quarter system, a week of instructional time is any week in which at least five days of regularly scheduled instruction, examinations, or preparation for examinations occurs, as opposed to one day of regularly scheduled instruction, examinations, or preparation for examinations for all other programs. The Secretary believes it is important to ensure that full-time students are performing comparable workloads regardless of the type of institution they are attending, and that such work should be ratably allocated throughout the period of instruction. The Secretary notes that this is an area of abuse that is not fully addressed by the implementation of the "clock hour/credit hour" regulations. A corresponding change has been made to the definition of an *eligible program*.

One-third of an academic year and two-thirds of an academic year. In response to public comment, the Secretary has defined one-third of an academic year and two-thirds of an academic year in order to clarify the procedure for prorating awards under the FFEL and NDSL programs.

Undergraduate student. Because the Secretary recognizes that, at this time, there are legitimate reasons supported by statute for separate definitions of an *undergraduate student* under the various Title IV, HEA program regulations the definition of *undergraduate student* has been deleted in these final regulations.

Section 668.8 Eligible Program

Qualitative factors. Section 668.8(e)(1)(iii) requires that, for a short-term program, the length of the program may not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement. In response to public comment, this provision has been amended to also prohibit a short-term eligible program from exceeding by 50 percent any applicable minimum number of clock hours required by a *Federal* agency for training in the recognized occupation for which the program prepares students.

In response to public comment, § 668.8(e)(2) has been revised to clarify that, since a certified public accountant cannot certify the accuracy of an institution's completion or placement-rate calculations, the institution shall substantiate these calculations by having the certified public accountant follow the procedures of an attestation engagement.

Calculation of completion rate. Section 668.8(f)(4) has been amended to require that a student must complete the educational program in which he or she is enrolled within 150 percent of the published length of the educational program in order to be counted as a completer for purposes of this calculation. This change was made to conform with the calculation of a completion rate under the Student Right-to-Know provisions. The Secretary notes that the Department will continue to evaluate the feasibility of replacing this methodology with the methodology developed relative to the Student Right-to-Know Act once that methodology has been published in final regulations.

Calculation of Placement Rate. In response to public comment, the requirement in proposed § 668.8(g)(1)(ii) that an institution exclude from the calculation of a placement rate students who are hired by the institution has been deleted from these regulations.

In response to public comment, a change has been made to the placement rate calculation to clarify that every student must be employed for at least 13 weeks in a recognized occupation for which they were trained or in a related comparable occupation before that student can be counted as placed.

The Secretary has amended § 668.8 by revising paragraph (k) to remove the provision that an institution offering an undergraduate educational program measured in credit hours and at least two academic years in length is exempt from applying the formula contained in paragraph (l) to that program if the program provides an equivalent degree as determined by the Secretary, or if each course within the program is fully acceptable for credit toward that institution's equivalent degree.

Paragraphs (k) and (l) were originally published in final regulations on July 23, 1993 (58 FR 39618). In those final regulations, the Secretary exempted from the requirements of the regulations, undergraduate educational programs that were at least two years in length and lead to an associate, bachelor's, professional, or an equivalent degree as determined by the Secretary or if each course within that program was fully acceptable for credit toward one of those degree programs at that institution. The Secretary believed that it was prudent to exempt programs that lead to an equivalent degree because there might be a type of degree being offered (not an associate, bachelor's, or professional degree) that the Secretary had not yet encountered. The Secretary wanted to be able to examine the degree to determine if that degree was in fact equivalent to an associate, bachelor's, or professional degree. If the Secretary determined that the degree was equivalent to an associate, bachelor's, or professional degree, and was at least two academic years in length, the Secretary would exempt from the regulations undergraduate educational programs that lead to the equivalent degree or if each course within the program was fully acceptable for credit toward that institution's equivalent degree.

However, since publication of the final regulations on July 23, 1993, the Secretary has yet to encounter a degree that the Secretary would consider to be an equivalent of an associate, bachelor's or professional degree. Conversely, dozens of institutions have submitted to the Secretary arguments that their diploma programs are the equivalent of an associate degree program. The regulations were never meant to permit a determination that a nondegree program be classified as the equivalent of a degree program. The regulations only applied to a determination of whether a degree resulting from an educational program is equivalent to an associate, bachelor's, or professional degree. Because the diploma programs are not in themselves degree programs, the Secretary does not consider those programs to lead to an equivalent degree.

Because of this misconception by many institutions that "equivalent degree" means an educational program equivalent to a degree granting program, and because the Secretary has not yet found a true instance of an equivalent degree that is not an associate, bachelor's, or professional degree, the Secretary is removing the phrase "equivalent degree as determined by the Secretary" from paragraph (k).

Subpart B—Standards for Participation in the Title IV, HEA Programs

Section 668.13 Certification Procedures

Period of participation. In response to concerns of many commenters about the consequences (particularly the potential for provisional certification) to a participating institution in the event that the Secretary does not complete a review of the institution's application prior to the expiration of the institution's program participation agreement, even if the institution had filed its renewal application in a timely manner, § 668.13(b) is amended to provide that full certification will be extended on a month to month basis following the expiration of a program participation agreement where the institution's application for recertification was materially complete, and submitted at least 90 days prior to the expiration date.

Provisional certification. In response to public comment, proposed § 668.13(c)(1)(ii) that provided that the Secretary may provisionally certify an institution if the financial responsibility and administrative capability of the institution was being determined for the first time has been deleted from these regulations. Although this provision is statutory, the Secretary has decided that the other standards requiring the use of provisional certification are adequate to identify institutions that would be captured by this provision where greater monitoring and procedural restrictions are appropriate.

Section 668.13(c)(2)(i) has been amended to clarify the maximum permissible length of periods of provisional certification. Upon further consideration, the Secretary has decided to repeat the language of the statute that provides that periods of participation under provisional certification should be for "complete award years." So, for example, the regulations will permit the Secretary to provisionally certify an initial applicant for one complete award year, rather than for a period of 12 months as proposed in the February 28, 1994 NPRM. This will provide the Secretary with a complete award year of data on which to base determinations of further participation for the institution.

In response to public comment, § 668.13(d)(1) that lists the requirements for provisional certification to participate on a limited basis for institutions that are not financially responsible has been amended to make clear that the criteria of this section are not required for an institution that meets the exceptions to the general standards of financial responsibility under § 668.15(d).

In response to public comment, § 668.13(d)(1)(ii) has been amended to clarify that any required submission of a letter of credit must be in an amount and in a form acceptable to the Secretary.

Proposed § 668.13(d)(1)(iii)(B) has been revised, consistent with similar changes in § 668.15(b) (3) and (4), to make clear how an institution demonstrates that it has met all of its financial obligations and is current in its debt payments. This provision is explained in greater detail in the section of the *Analysis of Comments and Changes* that addresses the factors of financial responsibility (§ 668.15).

In response to public comment, § 668.13(d)(2) has been clarified to explain that financial guarantees are only required if the institution comes within the requirements of § 668.15(c)(2), or where the institution fails to demonstrate financial responsibility under its current audit and has failed to do so at least one other time under the standards in effect during the preceding five years.

In response to public comment, a new paragraph (e) is added to § 668.13 which provides for denial of certification to initial applicants for participation in a Title IV, HEA program and to participants that have undergone a change of ownership resulting in a change of control, if the State in which those applicants or participants are located does not participate in the State Postsecondary Review Program. This addition conforms these regulations to the requirements of the State Postsecondary Review Program in 34 CFR part 667, and provides some further explanation of the consequences to an institution if the State in which the institution is located does not participate in the State Postsecondary Review Program. Under paragraph (e), the Secretary may provisionally certify a participating institution or branch campus in that State. Section 668.13(c)(2)(ii) has also been revised to provide that the provisional certification of an institution under these

circumstances expires at the end of the third complete award year following the date of the provisional certification.

In response to public comment, a change has been made to provide for notices of revocation of provisional certification to be sent by certified mail, instead of registered mail.

In response to public comment, § 668.13(f)(4)(i) has been modified to provide that the official reviewing a request for reconsideration of provisional certification must be different from, and not subject to supervision by, the official that issued the notice of revocation.

Section 668.14 Program Participation Agreement

In response to public comment, § 668.14(b)(1) has been amended to clarify that an institution must comply with all special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA. Corresponding changes have been made throughout the sections of 34 CFR part 668 and 34 CFR part 682 contained in this regulatory package.

In response to public comment, § 668.14(b)(4) has been amended to provide that an institution must provide information relating the administrative capability and financial responsibility of the information to a SPRE only if the institution was referred by the Secretary under 34 CFR 667.5.

The proposed regulations prohibited any type of incentive payments, particularly those based on "retention." In response to public comment, the Secretary has amended § 668.14(b)(22) to allow that token gifts may be given to students or alumni for referring other students for admission to the institution, as long as:

(1) The gift is not money, check or money order;

(2) No more than one such gift is given to any student or alumnus; and

(3) The value of the gift is no more than twenty-five dollars.

In response to public comment, proposed § 668.16(k) that requires that an institution: (1) Demonstrate a reasonable relationship between the length of the program and occupational entry level requirements and (2) establish the need for the training has been moved to § 668.14(b)(26). Further, the requirements of this provision have been amended to require an institution to demonstrate a reasonable relationship between the length of the program and occupational entry level requirements established by any Federal agency.

Section 668.15 Factors of Financial Responsibility

Sections 668.15(b) (1), (2), and (3) have been amended to clarify that, in order to be financially responsible, an institution must be providing the services described in its official publications and statements; providing the administrative resources necessary to comply with the requirements of subpart B; and meeting all if its financial obligations. This is a change from the proposed regulations that would have required an institution to demonstrate that it was *able* to provide and meet these requirements. The Secretary believes these changes more accurately reflect the intent of the regulations.

In response to public comment, § 668.15(b)(4) further defines the requirement that an institution be current in its debt payments. The Secretary considers an institution to be current in its long-term debt obligations if it is not in violation of existing loan agreements at the end of the institution's fiscal year. The Secretary considers an institution to not be current in all of its debt obligations whenever the institution is more than 120 days delinquent in making payments, and a legal claim has been initiated against the institution or a lien has been filed on its assets due to the non-payment of the obligation. The Secretary believes that an institution's non-payment of obligations is a serious concern because the possibility exists that legal actions brought by creditors may result in forfeiture of some or all of an institution's assets. Consistent with the determination that payment delinquencies place the institution at risk, the Secretary notes that such actions are also often precede an action by creditors to force a company into bankruptcy.

In response to public comment, § 668.15(b)(5) has been amended to require that the amount of an institution's required cash reserve shall be one-quarter of the amount the institution paid in refunds during its previous year, as shown in its audited financial statement. By using historical information specific to the individual institution, the Secretary provides for adequate reserves for all institutions, rather than establishing an across the board measure which would be inadequate for some and inappropriate for others. Also, in response to the comments, the regulations have been changed to require the cash reserve to be maintained as a cash deposit in a federally insured bank account or an investment in U.S. Treasury securities, with an original maturity of three months or less.

Proposed § 668.15(b)(6)(ii) that would have provided that an institution is financially responsible if the institution does not have a finding of unauthorized use of donor restricted net assets to meet current operating expenses, has been removed from these regulations. This change was made based upon general considerations that were presented in the public comments concerning the need to implement consistent standards for determining financial responsibility for for-profit and nonprofit institutions, and to simplify the administrative resources necessary to determine whether institutions were in compliance with the regulations.

In response to numerous public comments, § 668.15(b)(7)(i)(A) and (b)(8)(i)(B) have been amended to require that both for-profit institutions and nonprofit institutions must meet an acid test ratio of 1:1 to replace the proposed ratio requirements that differed for for-profit and nonprofit institutions. The acid test ratio is defined as the sum of cash and current accounts receivable, divided by current liabilities. The Secretary has kept the regulatory exclusions of unsecured or uncollateralized related party receivables because they represent capital outflows from an institution that do not contain provisions for repayment. The Secretary has allowed the inclusion of the institution's cash reserve requirement in the calculation of the acid test ratio.

In response to public comment concerning the proper development of standards for nonprofit and for-profit institutions, § 668.15(b)(7)(i)(B) has been amended to require that a for-profit institution may not have operating losses in one or both years exceeding ten percent of equity capital. The Secretary's intent is to determine whether a trend of continuing losses exists, or if a loss occurs in any one year that it's magnitude is such that it does not materially impact the equity of the institution. The Secretary has changed the reference year used in the calculation to be that of the beginning of the first year in the two year period rather than the most recently completed fiscal year.

In response to public comment, § 668.15(b)(7)(ii), (b)(8)(ii), and (b)(9)(v) have been added to provide that a for-profit institution, a nonprofit institution, or a public institution may demonstrate that it is financially responsible if it submits evidence of a superior bond rating as an alternative to having to meet the tests for financial responsibility. The Secretary considers

an institution to be financially responsible if the institution has currently issued an outstanding debt obligations that are, without insurance, guarantee, or credit enhancement rated at or above the second highest level of rating given by a nationally recognized statistical rating organization.

Section 668.15(b)(8)(i)(C)(*1*) has been changed from the NPRM to incorporate the existing requirement that a nonprofit institution must have a positive unrestricted current fund balance or positive unrestricted net assets. This requirement is unchanged from the former requirement in effect for more than fourteen years that a nonprofit have a positive unrestricted current fund balance.

Section 668.15(b)(8)(i)(C)(*2*) has been amended to require that a nonprofit institution may not have excess current fund expenditures in either or both of two years that results in a decrease in the current unrestricted fund or a decrease in unrestricted net assets of greater than ten percent of the institution's unrestricted current fund balance or unrestricted net assets in the beginning of the first year of the two year period. The proposed regulation would have required that a nonprofit institution not have a decrease in total net assets of such significance that if continued would result in a current ratio of less than 1:1. As in the requirement for for-profit institutions, the Secretary's intent is to determine whether a trend of continuing excess expenditures exists, or if a significant excess expenditure in any one year is so great in magnitude that it materially affects the unrestricted current fund balance or the unrestricted net assets of the institution.

In the NPRM the Secretary proposed that a public institution is financially responsible only if it has its liabilities backed by the full faith and credit of a state. In response to public comment, § 668.15(b)(9) has been revised to add three alternatives that a public institution may employ to demonstrate that it is financially responsible: for institutions reporting under the Single Audit Act, a positive unrestricted current fund balance; a positive unrestricted current fund balance in a state's Higher Education Fund, as presented in the general purpose financial statements of the state; or the submission of a statement by the State Auditor General that the institution has sufficient resources to meet all of its financial obligations.

In response to public comment, § 668.15(d)(ii) has been amended to identify the circumstances where an institution that does not otherwise demonstrate financial responsibility can continue to participate fully by showing that it meets certain conditions to demonstrate that it has sufficient resources to ensure against its precipitous closure.

In response to public comment, § 668.15(e)(3) has been added to clarify that the submission of an audit performed in accordance with the Single Audit Act satisfies the requirement for a submission of an audited financial statement under § 668.15(e)(1).

Section 668.16 Standards of Administrative Capability

In response to public comment, the Secretary has modified the proposed administrative standards significantly. The Secretary made some changes and clarified implementation of standards where commenters pointed out that the Secretary could achieve the same goal by requiring less detail or action by those institutions that have demonstrated a history of compliance with regulations governing the Title IV, HEA programs and by imposing more requirements or restrictions on institutions that either have no track record or have a record of problems administering the Title IV, HEA programs. The Secretary removed other sections of the proposed standards because there was overlap with the responsibilities of accrediting agencies or SPREs or duplication of other sections of the regulations.

In response to public comment, § 668.16(a) clarifies that an institution must administer the Title IV, HEA programs in accordance with all the statutory and regulatory provisions, and with any applicable special arrangement, agreement or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

In response to public comment, § 668.16(b)(1) is amended by adding documented success in administering Title IV, HEA programs to the list of factors the Secretary may consider in determining whether an individual is capable. The Secretary intends to use the list of factors in § 668.16(b)(2) primarily to assess the adequacy of staff levels at institutions that apply for initial participation, change of ownership, or the addition of a location or branch campus; institutions that make other changes that have an impact on the administrative capability of the institution, such as ceasing to use a financial aid servicer; and institutions with documented compliance violations.

In the preamble to the February 28, 1994 NPRM, the Secretary solicited comment on the regulation of appropriate staffing levels at institutions. In response to public comment, the Secretary does not plan to specifically regulate in this area at this time. However, § 668.16 has been amended to clarify that the Secretary will look at the number and distribution of financial aid staff when determining if an institution uses an adequate number of qualified persons to administer the Title IV, HEA programs. The Secretary believes this addition is inherent to this provision and should be clearly stated. However, the Secretary does not plan to closely scrutinize the number or distribution of financial aid staff at an institution unless the Secretary finds other indications that the institution may not be administratively capable due to understaffing or a poor distribution of staff at the institution.

In response to public comment, use of third-party servicers is added to the list of factors in § 668.16(b)(2).

After consideration of public comment, the Secretary agrees that the burden to an institution of having to prepare written procedures for or written information indicating the nature and frequency of communication of pertinent information among all the offices that have an impact on the administration of the Title IV, HEA programs outweighs the benefit that this provision would provide to the Secretary. Therefore, proposed § 668.16(b)(4)(i) has been removed from these final regulations. The Secretary also agrees that, unless compliance problems relevant to the listed responsibilities are identified, institutions may satisfy the requirement in § 668.16(b)(4) that an institution have written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary by a general written description of the responsibilities of the various offices.

In response to public comment, § 668.16(e)(3)(B) is amended to clarify that a maximum time frame in which a student must complete his or her educational program must be no longer than 150 percent of the published length of the educational program for full-time students.

This section is also amended to clarify that the time frame must be divided into increments *of equal size*. The Secretary is making this change, as well as the

change from previous regulations that requires increments to be the lesser of an academic year or one-half of the length of the program, to make clear that no increment can coincide with the length of the maximum time frame.

Some institutions have used the previous provision as a means of avoiding determining satisfactory academic progress for a student until the student completes his or her program. Increments of the maximum time frame are expected to coincide with an institution's payment period, however. For example, in a program of one academic year that is structured on a quarter basis, the increments would be expected to be the quarters.

In response to public comment, § 668.16(f)(3) has been modified to include documentation of a student's social security number in the information normally available to an institution and for which the institution must have a system to identify and resolve discrepancies.

In response to public comment, § 668.16(g) has been amended to clarify that an institution must only refer to the Office of the Inspector General of the Department of Education *credible* information indicating fraud and abuse.

In response to public comment, the following sections have been removed from these regulations: proposed § 668.16(i) that provided that an institution that serves significant numbers of students with special needs must have and implement plans for providing students with information about how to meet their needs; proposed § 668.16(j) that would require institutions to have procedures for receiving, investigating, and resolving student complaints; proposed § 668.16(l), requiring that certain information be made available to students; proposed § 668.16(m) that required that an institution have advertising, promotion, and student recruitment practices that accurately reflect the content and objective of the educational programs offered at the institution; proposed § 668.16(o) which addressed the issue of outstanding liabilities; and proposed § 668.16(r), which proposed consideration of completion, placement and pass rate standards. The specific reasons for the removal of these provisions are discussed in the section of the *Analysis of Comments and Changes* that addresses administrative capability (§ 668.16).

In response to public comment, proposed § 668.16(k) that requires that an institution: (1) demonstrate a reasonable relationship between the length of the program and occupational entry level requirements and (2) establish the need for the training has been moved to the program participation agreement section (§ 668.14).

In response to public comment, § 668.16(j) has been amended to specify that the significant problems identified in reviews of the institution that the Secretary will take into account in determining administrative capability, relate to the administration of Title IV, HEA programs.

Proposed § 668.16(s), which would have made an annual cohort default rate of 20% in the FFEL programs and a 15% default rate in the Federal Perkins Loan Program immutable standards of administrative capability, has been modified in these final regulations in § 668.16(m) as follows. The Secretary accepted commenters' arguments that it would be more logical to use a 25% cohort default rate for the FFEL programs over a three-year period. Further, the Secretary has specified in this section of the regulations that if an institution cannot be determined administratively capable solely because the institution fails to comply with this section, the Secretary will provisionally certify the institution in accordance with § 668.13(c). An institution will have the right to appeal noncompliance with this provision by submitting an appeal in accordance with § 668.17(d). The Secretary has amended § 668.17(c)(6) to specify that this standard will not apply to tribally controlled colleges, HBCUs, and Navajo community colleges.

In response to public comment, the Secretary has amended § 668.16(l) to provide for the use of net enrollment figures, after deduction of students who were entitled to a 100 percent refund, in the calculation of withdrawal rate. In addition, the Secretary has now restricted the calculation of withdrawal rates to withdrawals of undergraduate students. The Secretary believes that the undergraduate enrollment pattern is an adequate measurement of an institution's ability to administer the Title IV, HEA programs.

Section 668.17 Default Reduction Measures

In accordance with statute, § 668.17(c)(6) has been amended to extend the exemption of historically black colleges or universities (HBCUs), tribally controlled community colleges, and Navajo community colleges from the provisions of § 668.17(c)(1) to July 1, 1998. Section 668.17(c)(1) addresses the loss of participation in the FFEL programs for institution's with cohort default rates above the specified thresholds.

Section 668.17(f) which addresses Federal SLS Program participation has been deleted since the Federal SLS Program is no longer in existence.

Section 668.22 Institutional Refunds and Repayments

Section 668.22(a)(1)(ii), (e)(1)(i), (g)((2)(iv), (i)(1)(i)(B), and (i)(2)(iii) have been revised to reflect that a student who has taken an approved leave of absence is considered to have withdrawn for purposes of Title IV, HEA program refunds and repayments. This change has been made to ensure the treatment of leaves of absence is consistent for all Title IV, HEA programs. The Federal Pell Grant Program regulations consider a student on a leave of absence to have withdrawn for purposes of receiving Federal Pell Grant Program funds. This was inconsistent with the FFEL programs regulations, which allowed an institution to consider a student on a leave of absence to still be enrolled. The FFEL programs treatment of leaves of absence remains in effect, but only for in-school deferment purposes, not for purposes of Title IV, HEA refunds and repayments. All Title IV, HEA programs will now treat a leave of absence as a withdrawal for refund and repayment purposes. Corresponding changes have been made by removing the language addressing leaves of absence in proposed § 668.22(i)(1)(ii), (i)(2), and (i)(3)(iii).

Section 668.22(a)(2) has been amended to clarify that the institution must provide refund examples to students only upon request, and must inform students of the availability of these examples in the written statement of its refund policy. The language proposed in the February 28, 1994 NPRM was unclear and implied that the required written refund statement must include the refund examples themselves.

In response to public comment, § 668.22(c)(2) and (f)(2)(ii) has been amended to include allowable late disbursements of unsubsidized Federal Stafford loans and loans made under the FDSL Program when calculating a student's unpaid charges. This language has also been changed to allow for the inclusion of late disbursements of State student financial assistance, provided the State in question has a standard written late disbursement policy which the institution follows in calculating unpaid charges and provided the student is eligible to receive the late disbursement in spite of having withdrawn. If an institution chooses to

count a late disbursement of State student aid in this manner, the institution will be liable for any amount not disbursed within 60 days after the student's withdrawal. If the late disbursement of State aid does not come in, the institution must recalculate the Title IV, HEA program refund and return any additional amounts required to the appropriate Title IV, HEA program accounts or to the lender within the applicable regulatory deadlines.

The February 28, 1994 NPRM proposed that certain fees could be subtracted from the refund due under a *pro rata* refund calculation. This treatment was consistent with previous *pro rata* guidance given under the FFEL programs. The February 28, 1994 NPRM pointed out that, as proposed, the calculation included the fees in the institutional costs, allowed the institution to retain a prorated portion of those institutional costs, and then allowed the full amount of those fees to be subtracted from the resulting refund. The resulting "double-counting" allowed the institution to retain more than the actual fees that were charged. In response to commenters that supported the elimination of such double-counting, § 668.22(c)(4) has been revised to allow an institution to exclude certain fees from the *pro rata* refund calculation so that the most an institution would be allowed to retain is 100 percent of an institutional charge.

Further, in response to comment, the reference to an application fee as an excludable fee has been deleted as it is not necessary to specifically allow for such an exclusion. The Secretary agrees with the commenters that asserted that an application fee should not be a factor in the calculation of an institutional refund for Title IV, HEA program purposes, because it is not an educational cost.

The provision allowing for the exclusion of expended board credits in excess of the attributable prorated portion (proposed § 668.22(c)(1)(iv)), based on the period attended by the student prior to withdrawal, has been removed. After further examination, the Secretary has found this provision to be excessively complicated and not entirely effective in the purpose intended. No support for this provision was received from commenters and the Secretary plans to revisit this issue in the future, after seeking further input from the financial aid community. Except for treatment under the provision in § 668.22(c)(6)(i), all room and board charges must be included in the *pro rata* refund calculation and refunded at the applicable percentage, as required by the Amendments of 1992.

The language of § 668.22(c)(5) (and corresponding language in Appendix A) has been changed to clarify the specific requirements related to "other charges assessed the student by the institution" under the *pro rata* refund calculation. "Other charges" includes, but is not limited to, charges for any equipment, books, or supplies issued by an institution to the student, provided that the enrollment agreement signed by the student specifies a separate charge for such equipment or provided that the institution refers the student to an affiliated vendor for purchase of the equipment. An institution may exclude the documented cost of such equipment from the *pro rata* refund calculation in the following instances: For unreturnable equipment, if the student actually receives and keeps the equipment; or for returnable equipment, the student does not return the equipment in good condition allowing for reasonable wear and tear, within 20 days after withdrawal. For example, an item is not considered to be in good condition and, hence, is unreturnable, if it cannot be reused because of clearly recognized health and sanitary reasons. Institutions must clearly disclose in the enrollment agreement any restrictions on the return of equipment, including identifying equipment that is unreturnable. The regulatory language has been changed to reflect that an institution must notify the student in writing, prior to enrollment, that return of such equipment will be required within 20 days of withdrawal. It is the responsibility of the institution to determine whether specific equipment is returnable or not, in accordance with State and accrediting agency guidelines. This change conforms with a similar provision from the FFEL programs regulations. The Secretary believes that it would be unreasonable to expect a student to return equipment within a certain time period without ensuring that the student has been informed of the conditions of acceptable return of equipment.

The February 28, 1994 NPRM proposed that institutions be exempted from making refunds of $25 or less, because the burden and cost of making such a refund would exceed the amount refunded. However, that proposed change will not be made. Section 668.22(f)(3)(iii) has been amended to remove the proposed minimum dollar amount below which a refund would not have to be made. After further consideration, the Secretary believes that this proposed provision is inconsistent with the amendment made to section 490 of the HEA that established criminal penalties for failure to pay refunds, specifically including refunds of less than two hundred dollars. Further, the Secretary believes that by the time the institution has determined the amount of the refund, most of the administrative effort and cost has been expended. The Secretary believes that neither the institution nor the student would benefit from the proposal to allow institutions to forego making refunds of $25 or less. Also, the Secretary believes that part of the institution's administrative costs are recouped through the administrative fee that is allowed to be excluded from the *pro rata* refund calculation.

In response to public comment, language has been added to § 668.22(i)(1)(ii) to limit an institution's determination of a student's unofficial withdrawal to no later than 30 days after the expiration of the enrollment period, the academic year, or the program, whichever is earlier.

Section 668.22(i)(2) has been amended to clarify that the refund deadline in that paragraph is applicable only to refunds made to students, and does not alter or affect the FFEL regulatory deadlines for returning a refund to a lender or the regulatory deadline for returning a refund to a Title IV, HEA program account.

In response to public comment, the Secretary has provided the following examples to aid in the implementation of the refund requirements:

Example #1

Fair and Equitable Refund: Term Institution

Institutional Profile. Term Community College (TCC) offers two- and four-year programs, measured in credit hours, and its academic year is divided into two semesters, each 15 weeks long. TCC participates in the Federal Pell Grant program, the Federal Family Education Loan (FFEL) programs, and the Federal campus-based programs. TCC charges by the semester: $1800 for tuition, $2500 for on-campus housing and meals, $25 for application, and $75 for administrative costs. Noninstitutional charges include: books and supply costs (because these items are purchased separately by the student, from the campus bookstore or an unaffiliated vendor), living expenses and meals (if the student lives in off-campus housing), transportation, and personal miscellaneous expenses. (Noninstitutional costs vary by student budget, depending in part upon the educational program in which the student enrolls.)

Applicable Refund Policies. The State in which TCC is located has a modified pro rata refund policy: students who withdraw on or before the 25 percent point of the enrollment period receive a 75 percent refund; students who withdraw after the 25 percent point but on or before the 50 percent point of the

enrollment period receive a 50 percent refund; and students who withdraw after the 50 percent point but on or before the 75 percent point of the enrollment period receive a 25 percent refund. (Students withdrawing after the 75 percent point of the enrollment period receive no refund under State guidelines.)

TCC's accrediting agency refund guidelines offer a 50 percent refund to students who withdraw in the first four weeks of the enrollment period, and a 25 percent refund to those who withdraw after four weeks but before the beginning of the ninth week. (Students withdrawing after that point receive no refund under the accrediting agency policy.)

Student Profile. Sam the Student enrolled in a two-year program at TCC, moved into on-campus housing, and began attending classes. Sam made a cash payment of $500 toward institutional charges.

Financial Aid Package and Disbursements. Sam's financial aid package for the academic year consisted of a $2200 Federal Pell Grant, a $2400 Federal Stafford Loan, a $1600 FSEOG, and $1000 in Federal Work-Study funds. Sam's first disbursement of Federal Pell Grant funds ($1100), his first disbursement of Federal Stafford Loan funds ($1116—loan and origination fees have been subtracted), and his first disbursement of FSEOG funds ($800), were credited to his institutional account. Sam received $400 of his Federal Work-Study award, paid directly to him for living expenses, before he officially withdrew at the end of the fifth week.

Step One: Figuring the Educational Costs. Only institutional costs are included in the refund calculation. TCC must use the institutional costs as charged, by the term, for a total of $4375—$1800 tuition, $2500 on-campus housing and meals (because Sam lives on-campus), and $75 for administrative costs. (The $25 application fee is not a cost of education, so it is not included.) Noninstitutional costs are treated in the repayment calculation. (See Example #3.)

Step Two: Figuring the Totals Paid to Institutional Costs. TCC's records show that Sam paid $500 in cash toward his institutional costs, and that a total of $3016 in student aid was paid toward institutional charges [$1100 Federal Pell+$1116 Federal Stafford+800 FSEOG=$3016]. (The Federal Work-Study funds are not reflected in this total, because funds earned through work-study cannot be required to be refunded or returned, and are therefore not included in the calculation of a refund.)

The total paid to institutional costs (student payments and financial aid) is $3516 [$500+$3016=$3516]. Only funds paid to institutional charges are included in the refund calculation; aid disbursed to the student for noninstitutional expenses is treated in the repayment calculation. (See Example #3.)

Step Three: Checking for Pro Rata Eligibility Under the Law. To determine whether Sam is eligible for a statutory *pro rata* refund calculation, TCC must determine if he's a first-time student and if he withdrew on or before the 60 percent point in time of the enrollment period for which he was charged. Sam is a first-time student, because he's never attended classes at TCC prior to this term. He withdrew at the end of the fifth week in the term; the term is 15 weeks long, and the 60 percent point is figured in calendar time for term institutions [15 weeks×.60=9; so any withdrawal prior to the end of the ninth week falls within the 60 percent requirement of statutory *pro rata*]. Sam withdrew at the end of the fifth week, so he is entitled to a statutory *pro rata* refund calculation.

Step Four: Calculating the Unpaid Charges. Because a student's unpaid charges impact the refund calculation, TCC must first calculate Sam's unpaid charges (as defined in § 668.22(c) and (f)) using the following formula:

Total Institutional Costs
– Total Aid Paid to Institutional Costs

=Student's Scheduled Cash Payment (SCP)
– Student's Cash Paid to Institutional Costs

=Unpaid Charges

To calculate Sam's unpaid charges, TCC subtracts the $3016 in total aid paid to institutional costs (from Step Two, above) from the Total institutional costs of $4375 (from Step One, above). The resulting scheduled cash payment is $1359 [$4375 – $3016=$1359]. From that total, TCC subtracts Sam's cash payment of $500 (from Step Two, above) and Sam's unpaid charges equal $859 [$1359 – $500=$859]. This amount ($859) will be used in all three refund calculations.

Step Five: Calculating a Fair and Equitable Refund. Under the Amendments of 1992, TCC must calculate Sam's refund under State and accrediting agency guidelines, and under statutory *pro rata* requirements. TCC must then use whichever calculation provides the largest refund.

In accordance with the June 8, 1993 Student Assistance General Provisions regulations, for all refunds other than statutory *pro rata* refunds, the student's unpaid charges must be subtracted from the amount the institution may otherwise retain. Therefore, in calculating Sam's refund under State and accrediting agency guidelines, $859 (from Step Four, above) must be subtracted from the amount TCC could otherwise retain.

The State refund guidelines allow Sam a 50 percent refund (he withdrew after the 25 percent point but before the 50 percent point), which means TCC is allowed to retain 50 percent of the institutional charges. Total institutional costs (from Step One, above) are $4375. Assessed at 50 percent, this allows TCC to retain $2188 [$4375×.50=$2187.5]. (Figures are rounded to the nearest dollar.) However, in accordance with the June 8, 1993 regulations, TCC must subtract Sam's unpaid charges of $859 (from Step Four, above) from this amount. Therefore, TCC is actually allowed to retain $1329 [$2188 – $859=$1329]. Sam's refund under the State policy is $2187, figured by subtracting the amount TCC can retain from the total paid to institutional costs (from Step Two, above) [$3516 – $1329=$2187].

The accrediting agency refund guidelines allow Sam a 25 percent refund (he withdrew after four weeks but before the beginning of the ninth week), which means TCC is allowed to retain 75 percent of the institutional charges. Total institutional costs (from Step One, above) are $4375. Assessed at 75 percent, this allows TCC to retain $3281 [$4375×.75=$3281.25]. (Figures are rounded to the nearest dollar.) However, in accordance with the June 8, 1993 regulations, TCC must subtract Sam's unpaid charges of $859 (from Step Four, above) from this amount. Therefore, TCC is actually allowed to retain $2422 [$3281 – $859=$2422]. Sam's refund under the accrediting agency policy is $1094, figured by subtracting the amount TCC can retain from the total paid to institutional costs (from Step Two, above) [$3516 – $2422=$1094].

To figure Sam's refund under the statutory *pro rata* refund calculation, TCC must first calculate the portion of the enrollment period that remains (in accordance with § 668.22(c)) by using the following formula for credit-hour programs:

Weeks Remaining in Period
÷Total Weeks in Period

=Portion of Enrollment Period That Remains

Sam withdrew at the end of the fifth week of a fifteen-week semester, so 10 weeks remain in the term. TCC calculates that for Sam, 60 percent of the enrollment period remains [10÷15=.666, rounded down to the nearest tenth]. The statutory *pro rata* calculation allows Sam a refund proportionate to the portion of the enrollment period that remains: 60 percent. Total institutional costs (from Step One, above) are $4375. However, under the statutory *pro rata* refund calculation, TCC is allowed to exclude from this amount an administrative charge, not to exceed the lesser of $100 or 5 percent of the institutional charges (provided that the fee is a real and documented charge). Therefore, the $75 administrative fee charged to all TCC students can be excluded, making the total institutional costs for statutory *pro rata* purposes equal $4300 [$4375 – $75=$4300]. (Had the administrative fee exceeded $100 or 5 percent of TCC's total institutional charges, TCC could only have excluded the allowable portion of the fee.) Total institutional costs are assessed at 60 percent, making Sam's initial refund equal $2580 [$4300×.60=$2580]. However, in accordance with the law, TCC must subtract Sam's unpaid charges of $859 (from Step Four, above) from his initial refund amount. Therefore, Sam's actual refund under the statutory *pro rata* refund calculation is $1721 [$2580 – $859=$1721].

After calculating all of Sam's possible refunds, TCC must use the calculation which provides for the largest refund. In this case, the largest refund is provided by the State refund calculation: $2187. This refund amount must be returned, in Sam's behalf, first to the Title IV, HEA programs and then to Sam, in accordance with the allocation priorities in § 668.22(g); no portion of the refund due can be used to pay Sam's unpaid charges to TCC.

Example #2

Fair and Equitable Refund: Nonterm Institution.

Institutional Profile. Nonterm Technical Institute (NTI) offers 900-hour and 1200-hour programs, measured in clock hours, and its academic year is 30 weeks long. NTI participates in the Federal Pell Grant program and the Federal Family Education Loan (FFEL) programs. NTI charges by the program and requires payment up-front. The institutional costs of the 900-hour program are: $3000 for tuition; $520 for equipment, books, and supplies; and a $100 administrative fee. Institutional costs for the 1200-hour program are: $4000 for tuition; $740 for equipment, books, and supplies; and a $150 administrative fee. Noninstitutional charges include: living expenses and meals (NTI has no on-campus housing or food service), transportation, and personal miscellaneous expenses. (Noninstitutional costs vary by student budget, depending in part upon the educational program in which the student enrolls.)

Applicable Refund Policies. The State in which NTI is located provides a 90 percent refund to students who withdraw before completing 10 percent of the program; students who withdraw after the 10 percent point but before completing 25 percent of the program receive a 70 percent refund; students who withdraw after the 25 percent point but before completing 50 percent of the program receive a 45 percent refund; and students who withdraw after the 50 percent point but before completing 75 percent of the program receive a 20 percent refund. (Students withdrawing after completing 75 percent of the program receive no refund under State guidelines.)

NTI's accrediting agency gives an 80 percent refund to students who withdraw before completing 15 percent of the program; students who withdraw after the 15 percent point but before completing 45 percent of the program receive a 50 percent refund; and students who withdraw after the 45 percent point but before completing 60 percent of the program receive a 25 percent refund. (Students withdrawing after completing 60 percent of the program receive no refund under the accrediting agency policy.)

Student Profile. Susan the Student, who lives in an off-campus apartment, enrolled in a 900-hour program at NTI and began attending classes. Susan made a cash payment of $800 toward institutional charges.

Financial Aid Package and Disbursements. Susan's financial aid package for the program consisted of a $2000 Federal Pell Grant and a $2325 Federal Stafford Loan. Susan's first Federal Pell Grant disbursement ($1000) and the first disbursement of her Federal Stafford Loan ($1081—loan and origination fees have been subtracted) were credited to her institutional account. At the end of the academic year, NTI determined that Susan had unofficially withdrawn. The last record of Susan's attendance was a midterm exam she'd taken after completing 450 hours of the program.

Step One: Figuring the Educational Costs. Only institutional costs are included in the refund calculation. NTI must use the institutional costs as charged, by the term, for a total of $3620—$3000 tuition, $520 for equipment, books, and supplies, and $100 for administrative costs. Noninstitutional costs are treated in the repayment calculation. (See Example #3.)

Step Two: Figuring the Totals Paid to Institutional Costs. NTI's records show that Susan paid $800 in cash toward her institutional costs, and that a total of $2081 in student aid was paid toward institutional charges [$1000 Federal Pell+$1081 Federal Stafford=$2081].

The total paid to institutional costs (student payments and financial aid) is $2881 [$800+$2081=$2881]. Only funds paid to institutional charges are included in the refund calculation; aid disbursed to the student for noninstitutional expenses are treated in the repayment calculation. (See Example #3.)

Step Three: Checking for Pro Rata Eligibility Under the Law. To determine whether Susan is eligible for a statutory pro rata refund calculation, NTI must determine if she's a first-time student and if she withdrew on or before the point in time when she had completed 60 percent of the clock hours scheduled for the period of enrollment for which she was charged. Susan enrolled last year in the same program at NTI, but she never began attending classes and so was entitled to a 100 percent refund. Therefore, in accordance with the regulatory definition in § 668.22(c), Susan is a first-time student. Susan's last recorded date of attendance was at the point of having completed 450 clock hours; 900 clock hours are scheduled for the program, and 60 percent of the scheduled hours would be 540 clock hours [900 hours×.60=540]. Because Susan is a first-time student and she withdrew before completing 60 percent of the hours scheduled, she is entitled to a statutory pro rata refund calculation.

Step Four: Calculating the Unpaid Charges. Because a student's unpaid charges impact the refund calculation, NTI must first calculate Susan's unpaid charges (as defined in § 668.22(c) and (f)) using the following formula:

Total Institutional Costs
− Total Aid Paid to Institutional Costs

=Student's Scheduled Cash Payment (SCP)
− Student's Cash Paid to Institutional Costs

=Unpaid Charges

To calculate Susan's unpaid charges, NTI subtracts the $2081 in total aid paid to institutional costs (from Step Two, above) from the total institutional costs of $3620 (from Step One, above). The resulting scheduled cash payment is $1539 [$3620 − $2081=$1539]. From that total, NTI subtracts Susan's cash payment of $800 (from Step Two, above) and Susan's unpaid charges equal $739 [$1539 − $800=$739]. This amount ($739) will be used in all three refund calculations.

Step Five: Calculating a Fair and Equitable Refund. Under the Amendments of 1992, NTI must calculate Susan's refund under State and accrediting agency guidelines, and under statutory *pro rata* requirements. NTI must then use whichever calculation provides the largest refund.

In accordance with the June 8, 1993 Student Assistance General Provisions regulations, for all refunds other than statutory *pro rata* refunds, the student's unpaid charges must be subtracted from the amount the institution may otherwise retain. Therefore, in calculating Susan's refund under State and accrediting agency guidelines, $739 (from Step Four, above) must be subtracted from the amount NTI could otherwise retain.

The State refund guidelines allow Susan a 20 percent refund (she withdrew after the 50 percent point but before completing 75 percent of the program), which means NTI is allowed to retain 80 percent of the institutional charges. Total institutional costs (from Step One, above) are $3620. Assessed at 80 percent, this allows NTI to retain $2896 [$3620×.80=$2896]. However, in accordance with the June 8, 1993 regulations, NTI must subtract Susan's unpaid charges of $739 (from Step Four, above) from this amount. Therefore, NTI is actually allowed to retain $2157 [$2896 − $739=$2157]. Susan's refund under the State policy is $724, figured by subtracting the amount NTI can retain from the total paid to institutional costs (from Step Two, above) [$2881 − $2157=$724].

The accrediting agency refund guidelines allow Susan a 25 percent refund (she withdrew after the 45 percent point but before completing 60 percent of the program), which means NTI is allowed to retain 75 percent of the institutional charges. Total institutional costs (from Step One, above) are $3620. Assessed at 75 percent, this allows NTI to retain $2715 [$3620×.75=$2715]. However, in accordance with the June 8, 1993 regulations, NTI must subtract Susan's unpaid charges of $739 (from Step Four, above) from this amount. Therefore, NTI is actually allowed to retain $1976 [$2715 − $739=$1976]. Susan's refund under the accrediting agency policy is $905, figured by subtracting the amount NTI can retain from the total paid to institutional costs (from Step Two, above) [$2881 − $1976=$905].

To figure Susan's refund under the statutory *pro rata* refund calculation, NTI must first calculate the portion of the enrollment period that remains (in accordance with § 668.22(c)) by using the following formula for clock-hour programs:

Hours Remaining in Period
÷ *Total Hours in Period*
=Portion of Enrollment Period That Remains

Susan's last recorded date of attendance was at the point of having completed 450 clock hours, so 450 hours remain in the program. NTI calculates that for Susan, 50 percent of the enrollment period remains [450÷900=.50]. The statutory *pro rata* calculation allows Susan a refund proportionate to the portion of the enrollment period that remains: 50 percent. Total institutional costs (from Step One, above) are $3620. However, under the statutory *pro rata* refund calculation, NTI is allowed to exclude from this amount an

administrative charge, not to exceed the lesser of $100 or 5 percent of the institutional charges (provided that the fee is a real and documented charge). Therefore, the $100 administrative fee charged to all NTI students can be excluded, making the total institutional costs for statutory *pro rata* purposes equal $3520 [$3620 – $100=$3520]. (Had the administrative fee exceeded $100 or 5 percent of NTI's total institutional charges, NTI could only have excluded the allowable portion of the fee.) NTI could also exclude (from the total institutional costs) the documented cost of any returnable equipment that Susan failed to return in accordance with § 668.22(c), and the documented cost of any unreturnable equipment that was actually issued to Susan (and kept by Susan) in accordance with 668.22(c). Total institutional costs are assessed at 50 percent, making Susan's initial refund equal $1760 [$3520x.50=$1760]. However, in accordance with the law, NTI must subtract Susan's unpaid charges of $739 (from Step Four, above) from her initial refund amount. Therefore, Susan's actual refund under the statutory *pro rata* refund calculation is $1021 [$1760 – $739=$1021].

After calculating all of Susan's possible refunds, NTI must use the calculation which provides for the largest refund. In this case, the largest refund is provided by the statutory *pro rata* refund calculation: $1021. This refund amount must be returned, in Susan's behalf, first to the Title IV, HEA programs and then to Susan, in accordance with the allocation priorities in § 668.22(g); NTI cannot bill Susan for any unpaid charges, because under the statutory *pro rata* refund calculation, those charges have been paid by Title IV, HEA program funds.

Example #3

Repayment Calculation

Institutional Profile. United States Academy (USA) offers one- and two-year programs on a semester system; its academic year is 30 weeks long and divided into two equal semesters, each 15 weeks in length. USA participates in the Federal Pell Grant program and the Federal Family Education Loan (FFEL) programs. USA charges $800 tuition per semester. Noninstitutional costs are assessed by the semester at the following average rates: $3000 for living expenses and meals (USA has no on-campus housing or food service), $250 for books and supplies (not purchased through the institution), $600 for transportation, and $300 for personal miscellaneous expenses. (Noninstitutional cost assessments are amended as necessary based on individual student needs and circumstances.)

Institutional Repayment Policy. In keeping with the local bookstore's refund policy, 50 percent of the books and supplies allowance is incurred at the time of purchase. All other noninstitutional (living) expenses are prorated based on the percentage of the semester completed.

Student Profile. Sarah the Student, who lives in an off-campus apartment, enrolled for the winter semester at USA and began attending classes. She made a $400 cash yment toward her tuition costs. Her ninstitutional costs are adequately reflected in the institution's average student budget.

Financial Aid Package and Disbursements. Sarah's financial aid package for the program consisted of a $1800 Federal Pell Grant and a $2000 Federal Stafford Loan. Sarah's first Federal Pell Grant disbursement ($900) was applied first to her tuition balance ($400) and the remaining $500 was then disbursed to her in cash. The first disbursement of her Federal Stafford Loan ($930—loan and origination fees have been subtracted) was also disbursed directly to her. Sarah officially withdrew after attending 4 weeks.

Step One: Figuring Expenses Actually Incurred. Only noninstitutional costs are included in a repayment calculation. Institutional costs are treated in the refund calculation. (See Examples #1 and #2.) According to USA's repayment policy, 50 percent of Sarah's $250 books and supplies allowance was incurred at the time of purchase [$250x.50=$125]. The rest of her semester expenses, for living expenses and meals, transportation, and personal miscellaneous expenses, are prorated based on the percentage of the term completed. Total noninstitutional costs equal $3900 [$3000+$600+$300=$3900]. Because Sarah completed 4 of 15 weeks, these costs should be prorated at 27 percent [4÷15=.266, rounded to the nearest tenth]. Therefore, Sarah's noninstitutional costs incurred equal $1053 [$3900x.27=$1053].

Step Two: Figuring the Total Federal Student Financial Aid (SFA) Disbursed as Cash. Sarah received $500 of her Federal Pell Grant in cash, and all of her first Stafford Loan disbursements, $930, in cash. However, in accordance with § 668.22(e), the repayment calculation does not include any Title IV, HEA program loan amounts disbursed as cash, because those loan funds will have to be repaid by the student anyway. Therefore, a total of $500 cash disbursed is considered for repayment purposes. (As with the refund calculation, the repayment calculation does not include any Federal Work-Study funds disbursed as cash, because repayment of work earnings cannot be required. Notice that students Sam and Susan, from Examples #1 and #2 respectively, would not have owed repayments because they received no cash disbursements other than FFELP loan funds or Federal Work-Study funds.)

Step Three: Calculating the Repayment Owed. To calculate Sarah's owed repayment, USA must subtract the total costs incurred ($1053, from Step One above) from the total cash disbursed ($500, from Step Two above). In Sarah's case, this calculation results in a negative number [$500 – $1053=0], which means she owes no repayment. If her cash disbursement had exceeded her costs incurred, however, she would have been required to repay the balance back to the Title IV, HEA program funds (the Federal Pell Grant program, in this case), in accordance with the allocation priorities in § 668.22(g); if Sarah had owed unpaid charges to USA, no portion of the repayment owed could be used to pay those charges.

Section 668.23 Audits, Records, and Examinations

The Secretary has amended § 668.23 by requiring an institution or a third-party servicer with which the institution contracts to cooperate with the institution's nationally recognized accrediting agency in the conduct of audits, investigations, or program reviews authorized by law, in addition to the other authorized entities that were stipulated in the NPRMs.

In addition, the Secretary has amended this section to require an institution to have performed, without exception, on an annual basis, a compliance audit of an institution's administration of its Title IV, HEA programs or a third-party servicer to have performed, without exception, on an annual basis, a compliance audit of a third-party's administration of an aspect of an institution's participation in a Title IV, HEA program.

The Secretary is removing the audit exceptions proposed in the NPRMs that would have exempted certain institutions and third-party servicers from some or all of the audit requirements of this section because upon further review, the Secretary has determined that the proposed exemptions were inconsistent with the requirement in section 487(c) of the HEA that annual compliance audits be provided for in these regulations. However, changes are planned for the *Student Financial Assistance Programs Audit Guide* to reduce administrative costs by allowing institutions meeting certain performance-based or funding criteria to submit compliance audits under a reviewed or compiled basis rather than a full compliance audit.

Paragraph (c)(3) is revised to specify that an institution's or third-party servicer's audit report must be submitted to the Department of Education's Office of Inspector General within 120 days after the end of the institution's or servicer's fiscal year. An institution or third-party servicer that submits an audit conducted in accordance with the Single Audit Act (Chapter 75 of Title 31, United States Code) is required to submit that audit report in accordance with the deadlines established in that act.

Finally, paragraph (c)(4) is revised to include the Secretary of Veterans Affairs in the list of entities that the Secretary may require an institution or a third-party servicer to provide, upon request, the results of any audit conducted under this section.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.82 Standard of Conduct

The Secretary has revised paragraph (d)(1)(D) to clarify that a third-party servicer violates its fiduciary duty and that of any institution with which the servicer contracts if the servicer uses or contracts in a capacity that involves any aspect of the administration of the Title IV, HEA programs any person, agency, or organization that has been or whose officers or employees are guilty of a crime or judicially or administratively determined to have committed fraud or other material violation of law with respect to government funds.

Section 668.92 Fines

The Secretary has revised this section to take into account additional criteria when determining the amount of a fine against a third-party servicer. Paragraph (a)(5) is revised so that a repeated mechanical systemic unintentional error is not counted as a single violation if the third-party servicer, against whom the fine is assessed, had already been cited for a similar violation and had not taken the appropriate steps to correct the problem. The Secretary will also take into consideration in determining the amount of the fine, the amount of Title IV, HEA program funds that were wasted as a result of the repeated mechanical systemic unintentional error. The Secretary also makes a conforming change in § 682.413 to parallel the changes described in this section.

Part 682—Federal Family Education Loan Programs

Subpart D—Guaranty Agency Programs

Section 682.413 Remedial Actions

The Secretary has revised the provisions of this section governing the means of collecting a liability that results from a third-party servicer's violation of applicable Title IV, HEA program requirements in administering a lender's or guaranty agency's FFEL programs. A third-party servicer is required to repay any outstanding liabilities because of its violation only if the lender or guaranty agency has not paid the full amount of the liability or has not made satisfactory arrangements to pay the amount of the liability within 30 days from the date that the lender or guaranty agency receives the notice from the Secretary of the liability. If the 30-day period elapses and the lender or guaranty agency has not paid the full amount of the liability within that time frame or has not set up a payment plan acceptable to the Secretary to repay that liability, the Secretary will attempt to collect any remaining amount owed by offsetting the lender's or guaranty agency's first bill to the Secretary for interest benefits or special allowance. After that, if the liability has not been completely paid, the Secretary will seek payment for the remainder of the liability from the third-party servicer.

Section 682.416 Requirements for Third-Party Servicers and Lenders Contracting With Third-Party Servicers

The Secretary has revised paragraph (b) to specify that the Secretary will apply the provisions of 34 CFR 668.15(b) (1)–(4) and (6)–(9) to determine that a third-party servicer is financially responsible under this part. Any references to an institution under those provisions shall be understood to mean the third-party servicer, for this purpose.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRMs, 84 parties submitted comments on the NPRM published on February 17, 1994 and 421 parties submitted comments on the NPRM published on February 28, 1994. An analysis of the comments and of the changes in the regulations since publication of the NPRMs follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

General comments that refer to broad issues rather than a specific section or sections of the proposed regulations are discussed first, followed by a discussion of other issues in the order in which they appeared in the NPRMs.

It should be noted that not all comments are addressed in these final regulations. There are several reasons for this. First, many of the concerns expressed by commenters were directed to the statute, not the proposed regulations. In some instances, those comments are mentioned in the discussion that follows because of the importance of the issues that were raised. In most instances, however, they are not mentioned because the Secretary is not legally authorized to make the changes suggested by commenters. Second, many commenters made excellent suggestions for editorial and technical changes, as well as other minor changes, that, in the Secretary's opinion, strengthened the regulations; the Secretary has merely incorporated these suggestions without comment. Third, some comments appeared to be based on misunderstandings of what was actually in the NPRMs. For example, a few commenters expressed concern about the absence of a particular provision that was, in fact, included in the NPRMs. In general, these types of comments are not discussed.

General Comments

The Secretary received numerous comments about the overall impact of the proposed regulations. In general, commenters opposed to the proposed regulations believed that the February 28, 1994 NPRM did not achieve the coordinated balance of responsibilities among the triad members that it sought to achieve, and that it provided for extensive and duplicative data collection and reporting requirements that created a costly and unnecessary burden on the higher education community. Further, they believed that the regulations did not regulate "narrowly to the law," as they purported to do. In general, these commenters suggested that the Secretary should review each requirement in the proposed regulations to determine if it was required by the statute and should further ensure that all requirements that meet this test and are included in the final regulations are implemented in the most reasonable and cost effective manner. This, they believed, would ensure the Department's compliance with Executive Order 12866.

The more specific concerns of commenters opposed to the proposed regulations may be summarized as follows:

(1) The proposed regulations are overly prescriptive and excessive in detail and either exceed the statutory authority of the Secretary or significantly expand the statute beyond Congressional intent.

(2) The proposed regulations will force institutions and third-party servicers to engage in excessive and duplicative information gathering and reporting, at considerable cost, with no net increase in the quantity or quality of information available to the public, and will result in the diversion of institutions' and third-party servicers' already scarce resources away from their primary mission of providing a quality education.

(3) The proposed regulations threaten the diversity of American higher education and fail to focus oversight properly on vocational institutions.

In addition to receiving comments in opposition to the proposed regulations, the Secretary received comments supportive of the NPRM. For example,

these commenters favored the increased protections for students in the changes to the refund provisions, and approved of the strengthening of the administrative capability and financial responsibility standards.

Finally, the Secretary received suggestions from several commenters that the Department should strongly encourage all triad members to work together and adopt the same or similar language for the various standards, should collect the necessary data through a common source such as readily available public information or IPEDS, and should use common methodologies for various calculations such as completion or withdrawal rates.

Discussion: As suggested by several commenters, the Secretary has carefully reviewed each requirement in the proposed regulations in light of statutory intent. The Secretary has also carefully considered both the burden of the proposed regulations on institutions and third-party servicers, in terms of cost, duplication of effort, and the added recordkeeping and reporting requirements. Similarly, the Secretary has considered the benefits of the proposed regulations, not just to institutions and third-party servicers but to students and the general public as well. A particular concern of the Secretary has been how to ensure that the regulations hold the three members of the triad accountable for the manner in which they fulfill their responsibilities under the HEA yet still provide each member of the triad the flexibility to determine the appropriate means to carry out those responsibilities.

In general, the Secretary has responded to the concerns of commenters by eliminating much of what was perceived as excessive detail in the February 28, 1994 NPRM, thus providing institutions more flexibility to meet a particular requirement in the manner that best suits their needs. The final regulations make it quite clear that the Secretary continues to bear the primary responsibility for enforcing standards and requirements to ensure that institutions and third-party servicers administer Title IV, HEA program funds properly.

The Secretary does not believe that the Department's role overshadows those of the accrediting agencies or the States. These regulations not only speak to the responsibilities of each member of the triad, but also establish the Federal requirements for institutions and third-party servicers under the HEA. Therefore, the Federal role in these regulations may appear larger than that envisioned for the States and accrediting bodies, but this appearance is due to the inclusion of the implementing regulations for these responsibilities. Without question, the States and accrediting bodies will exercise their responsibilities by promulgating and implementing standards for HEA program participants, and the Secretary anticipates that any overview of all such requirements by the triad would show that the Federal role has been appropriately established. The Secretary notes that some of the commenters specific concerns are addressed in the *Analysis of Comments and Changes* section of these regulations.

Finally, with regard to the issue of whether the regulations properly focus on vocational institutions, the Secretary wishes to note that Congress found abuses in all sectors of higher education, not just the vocational sector. For this reason, the regulations apply to all institutions.

Changes: The specific changes to the regulations are discussed below.

Part 668—Student Assistance General Provisions

Subpart A—General

Section 668.2 General Definitions.

Academic Year. Comments: Many commenters argued that the proposed definition of a week in determining the length of an academic year should not be based on the number of days of instructional time for institutions that use clock hours to measure program length. These commenters suggested that a week of instructional time should be based on the number of clock hours completed by a student. Some of these commenters suggested that a week of instructional time should be defined as 24 clock hours; another commenter suggested 30 clock hours. A number of these commenters suggested that this approach was more consistent with the regulatory requirements for calculating pro-rata refunds, which relies on the number of clock hours completed by students.

Discussion: Section 481(d)(1) of the HEA requires that an academic year must be a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 900 clock hours at an institution that measures program length in clock hours. Thus, the statute requires a minimum of 30 weeks and a minimum of 900 clock hours; both standards must be met.

Changes: None.

Comments: Many commenters recommended that the Secretary implement the provision in the Technical Amendments of 1993 that provides that the Secretary may reduce, for good cause, the 30-week minimum to not less than 26 weeks of instructional time.

Many of these commenters suggested that "good cause" should be based on educational outcomes, such as placement rates or completion rates. Some commenters suggested the same standard that was proposed for short-term programs in § 668.8—a 70 percent completion rate and a 70 percent placement rate. Other commenters suggested that approval by an institution's nationally recognized accrediting agency or State postsecondary review entity (SPRE) would demonstrate good cause. Some commenters suggested that good cause should be based on whether an educational program has historically provided instruction for less than 30 weeks in previous academic years. Other factors suggested for defining good cause included fiscal stability of an institution, scheduling adjustments due to natural disasters, ethnic composition of an institution's student population, an accelerated or concentrated educational program, and educational programs that offer advanced placement.

Some commenters recommended that no reductions in the 30-week minimum should be permitted or that reductions should be approved on an extremely limited basis in order to avoid inequitable treatment of institutions and students.

Discussion: The Secretary did not propose specific criteria to implement this technical amendment in the February 28, 1994 NPRM, but instead requested comments on a definition of "good cause" and requested comments on ways of implementing this provision that addressed the Secretary's concern that reductions in the award year would encourage many institutions to seek that treatment routinely. After reviewing public comments on defining good cause, and developing safeguards to discourage routine requests for reductions in the academic year, the Secretary has implemented this technical amendment through regulation.

In an effort to discourage routine requests, the Secretary will grant a reduction for institutions that can demonstrate a commitment to changing to a 30-week academic year, but will not permit the period of reduction to exceed two years. For institutions that do not demonstrate a commitment to changing to a 30-week academic year, the Secretary may grant a reduction for a limited period, on a case-by-case basis.

The Secretary agrees with the commenters that suggested approval by an institution's nationally recognized accrediting agency or State body that authorizes the institution to provide postsecondary programs should be considered as factors in determining good cause on a case-by-case basis, but such approval may not be a sufficient reason for granting an institution's request. Other factors that should be taken into account include the number of hours of attendance and other coursework that a full-time student is required to complete in the academic year, and any unique circumstances that justify granting the institution's request.

The Secretary does not believe that placement rates, completion rates or other educational outcomes that may measure the quality of an educational program are relevant in determining whether the instruction offered in less than thirty weeks is sufficient to justify a reduction in the minimum standard. Other factors suggested by commenters may qualify as unique circumstances that justify granting the institution's request, depending upon the context in which these factors are presented in a particular case.

Every institution that requests a reduction must also demonstrate that it has provided Title IV, HEA program funds to its students based on the academic-year requirements in section 481(d) of the HEA since July 23, 1992, as the requirements became applicable to the various Title IV, HEA programs. The Secretary believes institutions must have made a good faith effort to comply with the requirements of the statute. Institutions that did not comply with the law should not now expect to receive a temporary waiver.

Changes: A new § 668.3 is established, under which, for the purpose of awarding Title IV, HEA funds, the Secretary may reduce the length of an academic year for an institution that submits a written request to the Secretary. The request must identify each educational program for which a reduced academic year is requested and specify the requested length, which may not be less than 26 weeks of instructional time. The Secretary considers requests for reducing an academic year only for educational programs at institutions that provide 2-year and 4-year programs leading to associate degrees or baccalaureate degrees, respectively. In addition, an institution must demonstrate that it has provided Title IV, HEA program funds to its students based on the academic-year requirements in section 481(d) of the HEA since July 23, 1992.

In addition, for an institution that currently has an academic year of less than 30 weeks and demonstrates that it is in the process of changing to a 30-week academic year, the Secretary will grant a reduction for a period not to exceed two years.

For an institution that meets all of the above requirements other than demonstrating a commitment to changing to a 30-week academic year, the Secretary may grant a reduction for a limited period, on a case-by-case basis. The Secretary considers such factors as approval of the academic year for each educational program by the institution's accrediting agency or State body that legally authorizes the institution to provide postsecondary education, the number of hours of attendance and other coursework that a full-time student is required to complete in the academic year, and any unique circumstances that justify granting the institution's request.

Comments: Some commenters supported the proposed definition of a week as a seven-day period of instructional time in which one day of regularly scheduled instruction, examination, or preparation for examination occurs. Some commenters argued that the standard of one day a week was too lax and susceptible to abuse. One commenter suggested that the minimum standard for one week of instructional time should be revised to require one instructional hour per week. Another commenter suggested that the definition of an academic year should be based on the total number of days of scheduled instruction.

Discussion: The Secretary agrees with those commenters who were concerned that the proposed definition of a week of instructional time was susceptible to abuse. Based on these comments and on information the Secretary has received regarding abuses in this area, the Secretary believes that the standard of one regularly scheduled instructional day per week needs to be increased to five days of regularly scheduled time per week for educational programs using credit hours and not using a semester, trimester, or quarter system. Under the proposed definition published in the February 28, 1994 NPRM, institutions could structure programs that do not use clock hours or standard academic terms to provide one class a week and permit those classes to be "made up" later in the program, in order to maximize the amount of Title IV, HEA program funds received by the institution.

Changes: A change has been made. For an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instructional time to be any week in which at least five days of regularly scheduled instruction, examinations, or preparation for examinations occurs. A corresponding change has been made to the definition of an *eligible program*.

Comments: A number of commenters suggested that instructional time should include internships. Some commenters suggested including other activities, such as periods of orientation, cooperative education, independent study, special studies, and research.

Discussion: The Secretary agrees that internships, cooperative education programs, independent study, and other forms of regularly scheduled instruction can be considered as part of an institution's academic year. In most cases, research is not considered to be regularly scheduled instruction. Orientation programs do not provide educational instruction related to class preparation or examination and must not be included in determining the length of an academic year.

Changes: None.

Comments: Several commenters argued that the proposed academic year definition would make it difficult for institutions to develop creative programs that allow students to accelerate their educational programs. One commenter believed that, if the Secretary does not account for these types of programs, a student will no longer have an incentive to accelerate his or her educational program, and the Department will expend more Title IV, HEA program funds on longer periods of study.

Discussion: Because the cost of a student's education includes living expenses in addition to the cost of tuition and fees, the Secretary believes that students who have an incentive to reduce their costs by accelerating their educational programs will still have a strong incentive to pursue a more concentrated or intensive course load. In addition, the Secretary will consider unique circumstance in determining whether to reduce the academic year for programs that are eligible for such consideration.

Changes: None.

Comments: A commenter suggested that the Secretary define two-thirds of an academic year as a minimum of 15 weeks of instructional time and one-third of an academic year as 10 weeks of instructional time in order to clarify the procedure for prorating the awards for students attending programs that are less than an academic year.

Discussion: The Secretary agrees that the procedure for prorating the awards

for students attending programs that are less than an academic year needs to be clarified. However, the Secretary does not believe that 15 weeks of instructional time is an adequate minimum standard for two-thirds of an academic year. If the minimum standard for a full academic year is 30 weeks, the minimum standard for two-thirds of an academic year should be two-thirds of 30 weeks (20 weeks).

Changes: A change has been made. In § 668.2, the Secretary defines two-thirds of an academic year as a period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate course of study, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

In § 668.2, the Secretary also defines one-third of an academic year as a period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate course of study, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

Comments: Several commenters suggested that the definition of an academic year in § 668.2 should be amended to reflect the provision in the Technical Amendments of 1993 specifying that the definition of academic year in section 481 of the HEA applies only to an undergraduate course of study.

Discussion: The Secretary agrees that a limitation in the definition of academic year needs to be included in § 668.2. However, the Secretary notes that the requirement that an academic year require a minimum of 30 weeks of instructional time applies to both undergraduate and graduate courses of study.

Changes: A change has been made to clarify that the amount of instruction that a full-time student is required to complete during an academic year applies only to an undergraduate course of study.

Full-time student. Comments: Several commenters believed that the Secretary should address the potential for abuse under the definition of *academic year* for educational programs that are measured in credit hours. One commenter suggested that the Secretary establish a weekly minimum full-time workload for full-time students in these programs by tying quarter hours to actual quarters to prevent an institution from claiming to offer a full academic year's worth of work over a thirty-week period by giving a full-time student a small amount of instruction, which the institution claims to be equivalent to 24 semester or 36 quarter hours. The commenter also suggested that the Secretary eliminate the use of quarter or semester hours for institutions that do not have quarters or semesters and instead require those institutions to measure their programs in clock hours.

Two commenters urged the Secretary to reject any mechanism where the institution would be responsible for self-measuring the quantity of work required because it would be too easy for unscrupulous institutions to evade. Instead, the commenters recommended that only bona fide courses, related work, research, or special studies would count toward whether a student would be full-time, and that each institution's quantification would have to be approved during the certification process set forth in § 668.13. One commenter also suggested that the Secretary change the procedures and not permit institutions to measure workloads for term or semester based schools in clock hours, because the clock hour schedules permitted institutions to compress the course offerings into too short a time period.

A few commenters advised that the clock hour/credit hour regulation would provide the protection necessary for the weekly schedules of students enrolled at institutions offering credit hours without terms, and recommended that no further action be taken in changing the proposed definition of full-time student. Several other commenters stated that they believed the proposed definition was sufficient to prevent abuse without further additions to establish a minimum full-time course workload. One commenter suggested that no stricter definition be adopted for full-time students enrolled at institutions offering credit hours without terms because this area is currently addressed by accrediting agencies, which are in a better position to evaluate the variety of delivery systems used by postsecondary institutions. One commenter also questioned whether it was fair to adopt a more stringent criterion for credit hour programs without academic terms rather than adopting uniform criteria and standards for full-time students for all sectors of postsecondary education.

One commenter suggested that the proposed definition was unfair because it requires the same number of credit hours for a student regardless of whether the courses are measured in semester hours or quarter hours, resulting in students having to perform a greater quantity of work during a quarter calendar if they were taking semester hours. Several other commenters suggested that the proposed definition was unfair because it would prohibit students from taking cooperative employment for periods that were less than eighteen weeks. These commenters suggested that shorter periods of cooperative education should be accepted in conjunction with a smaller number of credits so long as the workload was pro-rated to match the academic workload of a full-time student. For example, a student taking cooperative education for one-fourth of the credits necessary to be a full-time student would have to complete the cooperative training in one-fourth of the time allotted to a full-time student in an eighteen week program. Two other commenters stated that the proposed definition would establish workloads that could not readily be satisfied by part-time students or students that were taking evening or weekend classes. These commenters believed that students in these circumstances were often making many more sacrifices to pursue their education than full-time day students, and that it was unfair to reduce or eliminate aid that these students currently receive because they do not carry enough credits to qualify for comparable aid under the proposed regulations.

One commenter suggested that the in-class attendance should be the only component of the student workload considered for this provision, and that under that standard the definition for full-time student would require at least

12 hours of attendance per week to correspond to the 12 credit hour workload.

A few other commenters suggested that the proposed definition be clarified to show that only students taking classes "entirely" by correspondence would not be required to meet the workload requirements set out in the proposed definition. Others suggested that the language for credit hour workloads be amended to show that trimester hours would require the equivalent workload for semester hours for academic terms and academic years.

Discussion: As stated in the February 28, 1994 NPRM, this definition of *full-time student* is based primarily on the longstanding definition found in the Federal Pell Grant and the campus-based program regulations. The Secretary believes this definition of *full-time student* has proved to be appropriate and effective and does not believe any substantive changes are necessary. The Secretary notes that this definition is now applicable for purposes of all Title IV, HEA programs. The individual Title IV, HEA program regulations will be amended at a later date to remove the definition of *full-time student.*

The Secretary believes that additional changes are appropriate in the regulations to prevent institutions from establishing elongated instructional schedules that do not require an appropriate workload throughout that period for a full-time student. Institutions offering credit hour programs without terms have more flexibility in shifting the workload requirements for their programs over an indefinite period, and the Secretary believes that it is appropriate to establish some minimum instructional periods that must be used for full-time students attending these institutions. No corresponding changes need to be made where students are already required to receive a minimum amount of clock hours of training per week to be full-time students, or where the institution has fixed terms.

The Secretary also believes it is important to ensure through regulations that full-time students are performing comparable workloads regardless of the type of institution they are attending, and that such work should be ratably allocated throughout the period of instruction. The Secretary notes that this is an area of abuse that is not fully addressed by the implementation of the "clock hour/credit hour" regulations.

Rather than changing the proposed definition of full-time student to require measurement of student workloads, a modification is being made to require a minimum number of days of instruction per week for institutions that offer credit hour programs without terms. A discussion of the specific change is included in the section of the *Anolysis of Comments and Chonges* that addresses the definition academic year (§ 668.2).

Changes: None.

Undergraduote student. Comments: Several commenters objected to defining an *undergraduate student* as a student who has not earned a baccalaureate or first professional degree. The commenters noted that this would prevent students who were pursuing further undergraduate studies from receiving any Title IV, HEA program assistance. The commenters noted that this was a departure from current departmental practice that permits such a student to receive assistance under the Title IV, HEA loan programs.

Discussion: The Secretary recognizes that there are legitimate reasons supported by statute for separate definitions of an *undergraduote student* based upon the different statutory requirements for the various Title IV, HEA program regulations. The Secretary believes it is not appropriate at this time to include a general definition of an *undergraduate student* in the Student Assistance General Provisions regulations.

Chonges: The definition of *undergraduate student* has been removed from these final regulations.

Third-party servicer. Comments: Many commenters asked the Secretary not to include computer services or software in the examples of activities that constitute administration of a Title IV, HEA program, on the grounds that this type of service encompasses activities in a broad spectrum, from computer software distributors of popular commercial spreadsheet programs to computer on-line Federal news services. Several commenters stated that computer services are simply technological means utilized in administering the programs; computer servicers who actually perform administrative functions would be covered, therefore there is no need to separately include such providers in the definition. Other commenters argued for the inclusion of computer services or software in the examples of a Title IV-related activity. These commenters argued that it was necessary to include providers of computer services and software in the definition of third-party servicer because many distributors of software certify that their computer programs—represented to satisfy Title IV, HEA program requirements—comply with all applicable Title IV, HEA program requirements. As a result, institutions contracting with a provider for the software take for granted that the software is in compliance with all Title IV, HEA program requirements. If a violation of a Title IV, HEA program requirement occurs because of the software, the provider of that software should be held responsible. Several commenters argued that those software providers could be subject to potential liabilities for Title IV, HEA program violations, even though the computer programs of the provider could be modified by the user.

Discussion: The Secretary agrees with those commenters who either objected to the inclusion of computer services or software providers in the examples of Title IV-related activities, or who saw no need to separately include such providers. In adopting the definition of third-party servicer, the Secretary is not including providers of those services or software because the Secretary believes that this type of service is simply a technological means to assist in carrying out certain administrative functions that are already included in the proposed definition of a third-party servicer.

Chonges: None.

Comments: Two commenters were concerned that a third-party servicer could avoid the requirements of these regulations by simply not entering into a written contract with an eligible institution to administer any aspect of that institution's participation in the Title IV, HEA programs. The commenters recommended that the regulations stipulate that the acceptance of fees by the servicer from the institution for administration of any aspect of the institution's participation in a Title IV, HEA program would constitute a contract with the institution for purposes of the definition of third-party servicer under these regulations.

Discussion: The Secretary disagrees with the commenters that a third-party servicer that contracts with an eligible institution could be exempt from these regulations simply by not executing a written contract with that institution. A third-party servicer is defined as anyone who contracts with an institution, and is not limited to only those entering a written contractual agreement. Oral contracts, payment of fees for services rendered and other arrangements also constitute enforceable contracts. The Secretary recognizes these types of contracts and will consider an individual or organization employing such a method to contract with an institution to administer any aspect of the institution's participation in the Title IV, HEA programs to be a third-party servicer and therefore subject to

these regulations. The Secretary cautions institutions and third-party servicers that verbal contracts or other non-written contracts do not exempt institutions from documenting in writing the contractual obligations of both parties, including the requirements in § 668.25, and submitting a copy to the Secretary, if so instructed by the Secretary.

Changes: None.

Comments: One commenter felt that the activities of Multiple Data Entry (MDE) Processors and the Central Processor should be included in the examples of what constitutes administration of participation in a Title IV, HEA program because the data generated by MDEs or the Central Processor is the foundation for determining a student's eligibility for Title IV, HEA program assistance.

Discussion: The Secretary disagrees with the commenter. The Secretary has previously explained in the NPRM published on February 17, 1994, that MDEs serve under contract with the Department and are already bound by that contract and other Department of Education requirements. Therefore, the Secretary does not believe it necessary to separately regulate MDE activities as part of these regulations.

Changes: None.

Comments: One commenter was of the opinion that the activities of administering or scoring ability-to-benefit tests should be included in the examples of what the Secretary considers to be a third-party servicer activity because these activities constitute the determination of student eligibility.

Discussion: The Secretary agrees with the commenter that these activities could be considered to be an aspect of the administration of Title IV, HEA programs and therefore should be regulated. However, the Secretary believes that any abuses in these types of activities will be protected against in the regulations governing the administration of ability-to-benefit tests. The Secretary plans to issue an NPRM on this subject shortly. Therefore, the Secretary does not believe it necessary to regulate administering or scoring ability-to-benefit test activities as part of these regulations.

Changes: None.

Comments: A few commenters requested that attorneys litigating on behalf of institutions to collect loan funds or interpreting statutory or regulatory requirements be excluded from the definition of third-party servicer.

Discussion: The Secretary generally considers attorneys not to be covered by the definition of a third-party servicer under these regulations. The Secretary, in promulgating the definition of third-party servicer, applied the definition to a set of activities relating to the administration of the Title IV, HEA programs, and thus is not regulating distinct entities by their identity but rather the activities that individuals or organizations perform in contracting with institutions. Provision of legal advice is not one of these activities. However, it is conceivable that an attorney would be considered a third-party servicer under these regulations if the activity of the attorney, performed on behalf of an institution, constitutes administration of the Title IV, HEA programs. It would not be appropriate to state that attorneys are never considered third-party servicers as that would permit services to escape oversight simply by being provided under attorney signature or by non-attorneys working for attorneys or their law firms.

Changes: None.

Section 668.8 Eligible Program

Definitions. Comments: Some commenters believed that the definition of "equivalent of an associate degree" would be difficult to administer because colleges do not have consistent standards for accepting two-year programs for full credit toward a bachelor's degree and for qualifying a student for admission into the third year of a bachelor's degree program. Some of these commenters suggested that any person who completes the equivalent number of credit hours necessary to receive an associate degree should be included in this definition as long as the person earned those credits from an institution that was accredited by a nationally recognized accrediting agency. Other commenters suggested that any program that leads to an occupational objective that requires licensing or certification and equals at least the length of a typical associate degree program, should be added to the proposed definition. Another commenter expressed support for the provision as written in the February 28, 1994 NPRM.

Discussion: As stated in the February 28, 1994 NPRM, this definition is modeled after section 1201(a)(3) of the HEA, and is designed to measure the educational backgrounds of students admitted to programs offered by a proprietary institution of higher education and postsecondary vocational institutions. The Secretary believes that a student does not have the equivalent of an associate degree unless he or she has completed an educational program that includes two critical characteristics: the student successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree and the student qualifies for admission into the third year of a bachelor's degree program. The alternatives suggested by commenters lack these characteristics.

In response to comments about the absence of consistent standards, the Secretary notes that inconsistent standards apply to students with associate degrees as well. The two-year programs completed by students with an associate degree may be fully transferable to some institutions offering bachelor's degree, but not to other institutions. Institutions that have programs leading to a bachelor's degree also have different standards for determining a transfer student's standing.

Changes: None.

Qualitative Factors. Comments: Some commenters argued that short-term programs (programs of less than 600 clock hours) should not be required to be in existence for a year before establishing eligibility because the rate of technological change in the workplace dictates rapid responses by institutions in offering educational programs to meet those changes. Some of these commenters also believed that factors related to quality should be determined by accrediting agencies. Another commenter suggested that initial eligibility for these programs should be based on an institution's track record of success rather than the existence of the program for one year.

Discussion: The Secretary believes that a good track record of success is whether an institution can maintain a new program for one year. The Secretary agrees that the quality of these programs should continue to be monitored by accrediting agencies, but the history of abuse in these programs necessitates Federal regulatory standards as well. Institutions are not prevented from responding rapidly to the demands of the economy by offering new short-term programs, but institutions must be able to demonstrate that these new programs can meet the minimum placement and completion rate standards before Title IV, HEA funds are provided to students enrolled in these programs. Obviously, this data cannot be provided unless the program has been in existence for a period of time.

Changes: None.

Comments: A number of commenters objected to limiting the length of a program to no more than 150 percent of the minimum number of clock hours required for training in the recognized occupation for which the program

prepares students, as established by the State in which the program is offered, if the State has established such a requirement. Some of these commenters observed that the requirement would create inconsistent standards because States have different requirements and that maximum program lengths should be determined by accrediting agencies. Another commenter argued that differing State standards would make it difficult to train students from neighboring States if those States have higher standards.

Some commenters believed that "course stretching" was a frequent source of abuse. They cited examples of institutions' combining short programs into one accredited course that does not specifically lead to licensure, purely for the purpose of exceeding the statutory 600 clock hour minimum. These commenters recommended that the standard in the February 28, 1994 NPRM was too lenient and that the program length should not exceed the minimum State standard. Some commenters suggested that the minimum licensing standards of the Federal government should also be taken into account in limiting the length of a program. Another commenter suggested that exceptions should be made to the general standard if the education provided by a particular program was better than average.

Discussion: The Secretary believes that 150 percent of the State minimum allows enough latitude for institutions to provide quality programs and furnishes a sufficient safeguard against the abuses of course stretching. Because States have different licensing standards, the Secretary does not believe that a single standard for a maximum program length is appropriate. The argument made by one commenter about training students from neighboring States with higher standards only serves to illustrate the importance of recognizing each State's requirements. Training students who will not be able to meet the licensing requirements of the States in which they intend to work is a terrible disservice to those students. The Secretary agrees that these regulations ought to recognize any minimum standards established by various Federal agencies for applicable short-term programs.

Changes: This provision is revised to prohibit a short-term eligible program from exceeding by 50 percent any applicable minimum number of clock hours required by a Federal agency for training in the recognized occupation for which the program prepares students.

Comments: Some commenters argued that programs with a small number of graduates would not provide a statistically valid measure for completion or placement rates.

Discussion: The Secretary believes these rates are statistically valid unless fewer than thirty students complete a program in an award year. The percentage of educational programs this size participating in the Title IV, HEA programs is so small, that the issue of statistical validity does not need to be addressed in the regulations.

Changes: None.

Award Year. Comments: Many commenters suggested that the period of time for calculating the placement rate should be based on the most recent calendar year or on the award year ending twelve months earlier (i.e., for 1995–96, the placement rate would apply to students who graduated in 1993–94) instead of the immediately preceding award year, to account fully for the 180-day period permitted to demonstrate that a graduate has been placed and the 13-week period required to count an employed student as placed. The ability to count individuals as placements under these circumstances becomes increasingly difficult as graduation dates approach the end of an award year. Some of these commenters believed that this approach would be consistent with the reporting procedures of many States and accrediting agencies.

Other commenters suggested that the burden on institutions would be reduced significantly if the formula for calculating placement and completion rates were the same as the Department's Student-Right-to-Know provisions, and if the same formulas were used by accrediting agencies and State licensing agencies.

Discussion: As noted in the earlier discussion, one reason that the Secretary has adopted the requirement for a short-term program to be in existence for at least one year is to allow for a track record of completion and placement rates. If the calculation of these rates were to be based on an earlier award or calendar year than the one specified in these regulations, the Secretary would need to require that newly established short-term programs remain ineligible for an even longer period so that track record could be established. The Secretary does not wish to discourage the creation of legitimate, high quality short-term programs by requiring too great a period of ineligibility for those programs. The Secretary notes, of course, that once these regulations have been in effect for at least a year, data for currently eligible programs, based on earlier years, will be available for review.

The Secretary agrees that a standard rate is desirable, to the extent that a standard rate will provide the information the Department and other entities seek to obtain. Some rates may have to differ in order to achieve the purpose for which they are mandated. For example, a rate that is designed purely for consumer information purposes may require different data or time periods, than a rate that must coincide with student aid program calendars or a rate that is used for long-term academic studies. The Secretary cannot control the design of placement rates required by State agencies or accrediting agencies, but a standard rate or rates that can be calculated from the same data sources would help to reduce the burden on institutions. The Secretary encourages States and accrediting agencies to foster the development of uniform standards the Secretary could adopt, or adopt the standards in these regulations.

The Student-Right-to-Know regulations are currently being drafted with the intention of developing a completion rate that will be useful for all Title IV, HEA programs when the statute so permits; but the Student-Right-to-Know regulations will not require a placement rate calculation.

Changes: None.

Calculation of Completion Rate. Comments: Some commenters suggested that the definition of "enrolled" for purposes of calculating completion rates should be amended to reflect only students who begin attending classes.

Another commenter noted that some institutions do not charge new students for any institutional costs during the first month that the students attended classes, because administrators at these institutions believe that if these students withdrew before tuition and fees were assessed, the students could be excluded from the calculation of a completion rate.

Discussion: As stated in the February 28, 1994 NPRM, when calculating the completion rate, an institution would subtract from the number of regular students who were enrolled in the program those students who withdrew, dropped out of, or were expelled from the program and were entitled to and actually received in a timely manner in accordance with the refund requirements of these regulations, a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy. The Secretary believes that this provision addresses the commenters concerns.

Changes: None.

Comments: Some commenters suggested that students who transfer to another program or who withdraw because they have found a new job, should be excluded from the completion-rate formula.

Discussion: The Secretary believes that transfer students and students who withdraw for the purpose of starting new jobs or withdraw for other reasons are accounted for by allowing up to 30 percent of the enrolled students to withdraw from the program.

Changes: None.

Calculation of Placement Rate.

Comments: Many commenters objected to the requirement that a student must be employed for at least 13 weeks following graduation from an institution to be included in that institution's placement-rate calculation. These commenters believed that this requirement is overly burdensome because the institution would have to track those students for long periods. They believed that an institution should not be held accountable for factors that are beyond the institution's control, such as layoffs, plant closings, illnesses, forced relocations, or the motivation of students. Some commenters suggested that instead of tracking students (who tend to be very mobile) for 13 weeks, evidence of the initial hiring by an employer should suffice. A commenter suggested that the period of employment should be reduced to 30 days.

Discussion: As discussed in the February 28, 1994 NPRM, the Secretary believes that an employment requirement of 13 weeks will help stem abuses by institutions that may arrange to have students hired for short-term jobs in order to boost placement rates. In addition, a period of time beyond the initial hiring by an employer should be used to determine that the student received adequate training from the institution. The Secretary believes that extraneous factors affecting a student's employment are accounted for by using a placement rate that excludes up to 30 percent of the institution's graduates. The 13-week period is consistent with the period of time a student must be employed to be counted in the institution's placement rate under the procedures delineated in § 668.17(d) for the appeal of an institution's loss of participation due to an unacceptable cohort default rate

Changes: None.

Comments: A commenter suggested that students who are placed in jobs that are not related to their training should be counted, or at least excluded from the placement-rate formula. Another commenter suggested that placements should be limited to graduates who obtained a job in the recognized occupation for which they were trained in order to prevent program abuse.

Discussion: Students who are placed in jobs not related to their training should be treated in the formula in the same manner as students who are not employed. The placement rate is designed to measure the effectiveness of the training provided by the institution, and employment in an unrelated job does not demonstrate that the training was effective. The Secretary believes that graduates who are employed in occupations that are comparable and related to the occupation for which they have been trained should be included in the numerator of the placement rate formula. In these circumstances, the training provided by the school is likely to have been a contributing factor in obtaining employment. However, the Department may revise this provision in the future if there are numerous incidents of abuse in this area.

Changes: None.

Comments: A number of commenters contended that it would be too burdensome for institutions to document the placement rates of students because students and employers would have little incentive to provide written verification of employment. Some commenters believed the substantiation requirement would discourage employers from hiring students from institutions that solicited documentation. Some commenters recommended that the institution should be required to record information, such as the name, address, and telephone number of the employer, the job title, and the starting date of employment, instead of obtaining the documentation proposed in the February 28, 1994 NPRM. A State agency, or the Department's reviewers, or an auditor could then use this information to verify the placement. Other commenters suggested that a written statement from the student that his or her employment was a result of the institution's training would be sufficient verification; or that an institution should merely be required to document its attempt to obtain written verification from employers or graduates.

Many commenters also were concerned about the cost of the Secretary's proposed requirement that an institution's auditor should review the documentation of placement rates for each student in the placement-rate calculation. Some of these commenters suggested that the auditor be permitted to verify the placement rates by selecting a random sample. Some commenters suggested that the Department should administer and pay for its own placement substantiation procedures.

Discussion: As stated in the preamble to the February 28, 1994 NPRM, the Secretary believes that requiring institutions to document this data and requiring an auditor to review this data will help curb abuse by institutions that may overstate their placement rates to achieve and maintain eligibility for short-term programs. In order to address this concern, the Secretary believes that documentation of employment must be made by a reliable source and that written statements by the student or the institution are not sufficient. The failure of an employer or student to respond to requests for documentation is accounted for by using a placement rate that excludes up to 30 percent of the institution's graduates.

The Secretary disagrees with comments that the requirement of auditing each placement rate is unnecessary or prohibitively expensive. The audit will be conducted as part of the institution's annual compliance review and specific guidance provided in the Department of Education's audit guide should be drafted in a manner sufficient to detect abuse and avoid unnecessary costs.

Changes: None.

Comments: Some commenters suggested that based on auditing literature, certified public accountants cannot certify the accuracy of an institution's placement-rate calculations, but must instead follow the procedures of an attestation engagement.

Discussion: The Secretary agrees with the commenters that a clarification is necessary.

Changes: This section has been amended to require that an institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 668.23 report on the institution's calculations based on performing an attestation engagement in accordance with the Standards for Attestation Engagements of the American Institute of Independent Certified Public Accountants (AICPA). Section 668.24 has also been amended to reflect the same type of change discussed here.

Comments: Some commenters argued that students who are hired by an institution either before or after they receive a degree or certificate from that institution, should not be excluded from the placement rate calculation. The

commenters suggested that institutions would be penalized for hiring the most qualified candidate and that any abuse in this area could be easily detected. Other commenters suggested that graduates who are employed by separate businesses that are operated by, or financially linked to, an institution's owner(s) should be excluded from the placement-rate calculation. Some commenters suggested that graduates who were student employees should not be subtracted from the number of students who have degrees or certificates if they find a position with another employer.

Discussion: Upon further consideration, the Secretary agrees that including students who are hired by an institution would have a negligible effect on the institution's placement rate, particularly if the hiring is based on a legitimate employment selection process.

The Secretary does not agree with the suggestion to exclude graduates from an institution's placement-rate formula if they are hired by separate businesses that have some financial connection to the institution. In many of these cases, the potential for abuse is not as great because the economic interests of the parties that control the separate businesses do not necessarily coincide with the financial interests of the institutions.

The Secretary agrees that student employees who are no longer employed by the institution upon graduation and who are hired by another employer after graduation, should not be excluded from the placement rate calculation.

Changes: The requirement that an institution exclude from the calculation of a placement rate students who are hired by the institution has been deleted from these regulations.

Comments: Some commenters believed that the placement rate calculation may be misinterpreted by some institutions because the proposed placement rate calculation requires the school to include students in the numerator who, "on the date of this calculation *are employed*, or have been employed for at least 13 weeks following receipt of the credential by the institution." These commenters suggested that the phrase "are employed" will be interpreted to mean that any student employed at the time the calculation is made, regardless of whether they have met the 13-week standard, can be included in the numerator.

Discussion: Every student must be employed for at least 13 weeks in a recognized occupation for which they were trained or in a related comparable occupation before that student can be counted as placed. The Secretary agrees to clarify this provision.

Changes: A change has been made to clarify that every student must be employed for at least 13 weeks in a recognized occupation for which they were trained or in a related comparable occupation before that student can be counted as placed by inserting a comma after the words "have been employed."

English as a Second Language. Comments: Some commenters argued that the purpose of the testing requirement for students who completed a program in English as a Second Language (ESL) was unclear, and that testing the proficiency of these students was an intrusion on an institution's internal academic affairs and a violation of the Department of Education Organization Act. Another commenter recommended testing students before they enrolled in an ESL program to determine whether they needed to improve their proficiency skills, as well as testing students who completed the program. A commenter suggested that the ESL testing provisions should also apply to vocational programs that include ESL education within the curriculum. Another commenter expressed support for the provision as written in the February 28, 1994 NPRM.

Discussion: As discussed in the February 28, 1994 NPRM, the purpose of this requirement, which is based on a California law, is to curb abuses by institutions. Some institutions have received significant amounts of Federal Pell Grant funds for students who have not attained an adequate proficiency in written and spoken English to use already existing knowledge, training and skills. Because this testing requirement is limited to ESL programs that are ancillary to an institution's academic programs, the Secretary does not believe it is an intrusion on an institution's internal academic affairs.

The suggestions to add a pre-test requirement or to extend the testing requirement to vocational programs that include ESL courses were not adopted at this time. However, the Secretary intends to monitor reports of abuse in these areas to see if regulation is necessary. Institutions are encouraged to test all students before and after they enroll in ESL courses to determine whether the students need to improve their proficiency skills and to determine whether the students have attained the desired proficiency skills after completing the courses.

Changes: None.

Subpart B—Standards for Participation in the Title IV, HEA Programs

Section 668.11 Scope

Comments: A few commenters opposed subjecting a third-party servicer to proceedings under subpart G of this part, which governs emergency actions, fines, and limitation, suspension, or termination of participation in the Title IV, HEA programs. The commenters felt that since the Secretary has noted that institutions are ultimately responsible for any liabilities incurred that the institutions should be responsible for monitoring the activities of the organization with which they contract.

Discussion: The Secretary disagrees with the commenters who argued that third-party servicers should not be subject to proceedings under subpart G of this part. The statute specifically requires the Secretary to apply subpart G proceedings to third-party servicers. The Secretary agrees with commenters that institutions have a duty to monitor the actions of their third-party servicers, and that an institution is always ultimately liable for any violations caused by those servicers, but, the Secretary believes that Congress clearly intended for the Secretary to directly hold third-party servicers accountable for any program violations through the use of all sanctions that the Secretary is able to impose. The sanctions under subpart G of this part are an appropriate recourse to use to correct program violations because a third-party servicer, as an agent of an institution, contracts with institutions to provide services that parallel an institution's responsibilities under the institution's program participation agreement.

Changes: None.

Section 668.12 Application Procedures

Applications for continued participation. Comments: This section of the regulations generated many comments. Some commenters were concerned about the circumstances under which their institutions might be required to file an application in order to continue to participate in a Title IV, HEA program. The majority of the comments concerned the need for institutions to be notified enough in advance of the expiration of their program participation agreements so they could file an application for reapproval and the corresponding need for the Secretary to act on an institution's renewal application prior to the expiration of the institution's program participation agreement.

A number of commenters were concerned that the provision requiring

institutions to apply for recertification upon the request of the Secretary allowed the Secretary too much discretionary authority and would mean that the Secretary would act in an arbitrary and capricious manner. Many of these commenters believed that the regulations should identify the specific circumstances or significant events that would trigger a request from the Secretary and should require the Secretary to explain the reasons for the request. Two commenters recommended further that the regulations make clear that the Secretary will initiate action only if there is reliable evidence affecting an institution's financial responsibility or administrative capability. This commenter also said that it should be made clear that such an application would not be considered an initial application and that if the Secretary were to determine, on the basis of the application, that the institution should no longer participate in a Title IV, HEA program, the institution would have recourse to the appeal procedures specified in subpart G of this part.

Over seventy commenters were very concerned about the recertification process. Their understanding of the process was that even were an institution to file an application for reapproval in a timely manner, if the Secretary did not approve the institution prior to the expiration date of its program participation agreement, the institution either would lose approval altogether or would be provisionally certified. Because provisional certification connotes lesser status to these commenters and confers fewer appeal rights than full certification, the commenters viewed provisional certification under these circumstances to be unfair and unacceptable.

Many commenters provided concrete, constructive recommendations for addressing their concerns. The majority of these commenters asked that the Secretary notify institutions in advance of the scheduled expiration dates of the program participation agreements and supply the necessary application forms. One group of commenters suggested that the Secretary establish time frames for the submission and the processing of applications. The time frames proposed by the commenters varied greatly, with one commenter urging that the Secretary be required to send applications to institutions 18 months in advance of the expiration dates of the program participation agreements and another stating that six months would be sufficient. Other commenters would have the regulations require that the Secretary act on an application within 45 or 60 days of receipt. The approach taken by another group of commenters was to recommend that if an institution submitted an application for renewal within a specific time frame, such as a certain number of days prior to the expiration date of the program participation agreement, the Secretary should extend the certification of the institution, as necessary, until the Secretary's review is complete.

Discussion: The Secretary finds it necessary to reserve the right to require a participating institution to submit an application for certification if the Secretary has reason to believe the financial responsibility or administrative capability of the institution is in question. The Secretary refers those concerned to a discussion of the Secretary's position on page 9533 of the preamble to the NPRM published on February 28, 1994. The Secretary reiterates that the Secretary expects to exercise this authority rarely and to advise the affected institution of the reason for the request. An application submitted under these provisions is not considered an initial application, because the institution is a participating institution. The institution continues to be governed by the program participation agreement in effect at the time the institution submits its application until that program participation expires, the institution signs a new program participation agreement, or the Secretary limits or terminates the institution's program participation agreement under the procedures in subpart G of this part.

The Secretary understands the concerns expressed regarding the processing of renewal applications and agrees that an institution should not be penalized if it files an application in a timely manner but the Secretary is unable to complete a review of the institution prior to the expiration date of the institution's program participation agreement. For a full discussion of this issue, see the section of the *Analysis of Comments and Changes* that addresses certification procedures (§ 668.13).

Changes: None.

Notification and application requirements for additional locations.

Comments: There were a number of comments on this section, and they conveyed a wide range of concerns. Many of the commenters were concerned that institutions would be required to notify the Secretary of each new location, regardless of the percentage of the educational program offered at the location. Many of these commenters asserted that the provision would prohibit community colleges from responding to community needs, because community colleges are constantly offering training and education at new locations.

Other commenters could discern no reason why the addition of a branch campus or other location at which 100 percent of an eligible program is offered should trigger a certification review of an entire institution. These commenters suggested that because accrediting agencies and State licensing bodies review additional locations, there is no need for the Secretary also to conduct a review. One commenter went so far as to recommend that § 668.12(b)(2) be removed, to guarantee that if the Secretary were to decide to certify a branch campus or other location, the decision could not trigger a recertification review of the entire institution.

Commenters were concerned about the effect of these regulations on the ability of institutions to continue to offer internships on sites apart from their main campuses. Commenters complained about the effect of these provisions on an institution that contracts with a company to provide training for the company's employees on the site of the company's facilities.

A few commenters supported the Secretary's need to monitor the financial responsibility and administrative capability of institutions that establish locations that offer at least 50 percent of an educational program. Two commenters recommended that the regulations be expanded to require that a location that offers less than 50 percent of an educational program be reported to the Secretary if the volume of activity at the location exceeded a certain threshold.

Discussion: The comments reflect a good deal of confusion about the current requirements for reporting the addition of locations, current application procedures, and the proposed regulations.

The current Institutional Eligibility regulations, published on April 5, 1988, specify in § 600.30(a)(3) that institutions are to notify the Secretary of any changes in the name or number of locations since the institution's last eligibility application. As a practical matter, the Secretary has required institutions to report only changes to those locations at which the institution offered a complete educational program. This policy has been reflected for several years in the application and instructions. Thus, the notification requirement in these regulations, and the corresponding requirement in the new Institutional Eligibility regulations at § 600.30, are actually less onerous than the requirements in earlier

regulations. Under these final regulations, community colleges and other institutions that frequently establish outreach locations at which they offer one or two courses need not report these locations. And, unless the internship portion of a student's program constitutes at least 50 percent of that program, there would be no need to report the location at which an internship is performed. Similarly, there is no need to report locations that offer only continuing education classes and do not have students who are eligible to receive Title IV, HEA program funds.

The Secretary has determined through experience that the addition of a branch campus or other location that offers a complete educational program can have a major impact on the financial status of the whole institution and the ability of the whole institution to administer the Title IV, HEA programs. For many years, the Secretary has required institutions that seek to add a location at which a complete educational program is offered to undergo a certification review so that the Secretary could ascertain whether the institution has the financial resources and sufficient administrative capability to support another location. In addition, section 498(b) of the HEA requires the Secretary to have a form on which the institution describes the relationship between a main campus of an institution and all of its branch campuses. It follows then that the Secretary cannot scrutinize a branch campus in a vacuum. Thus, this provision is a codification of the Secretary's longstanding policy and application procedures and new statutory requirements.

Commenters that discussed employer-sponsored training programs seemed not to understand that if institutions contract with employers to provide training programs at the work-site or some other off-campus location that employer is paying for the cost of training and no Title IV, HEA program funds are involved, there is no need for the institution to notify the Secretary.

The Secretary has established a requirement that an institution must notify the Secretary of a location that offers at least 50 percent of an educational program if the institution wishes to have the location included in the institution's participation in a Title IV, HEA program. The Secretary puts institutions on notice that they may be required to file a complete recertification application in such situations, but the Secretary expects to make requests for complete recertification applications only rarely.

Changes: None.

Notification and application requirements for changes in name, location, or address. Comments: Two commenters stated that the Secretary should not require an institution to undergo a recertification review if the institution changed only its name, address, or location.

Discussion: This section requires only that institutions notify the Secretary of such changes.

Changes: None.

Required forms and information. Comments: A few commenters asserted that the proposed requirement of § 668.12(e)(2) for an institution to provide to the Secretary upon request all information that the Secretary needs to certify an institution was too broad. Their perception was that the requirement would give the Secretary unlimited access to institutional information under the guise of a certification review. They recommended that the provision be revised to state that the Secretary would request only the information and documentation specified on the application form.

Discussion: This provision refers only to information and documentation needed to certify that the institution meets the standards in this subpart, particularly the factors of financial responsibility and standards of administrative capability. The application form clearly specifies the information and documents that institutions must submit with their application. However, the Secretary must retain the flexibility to request additional information or documentation to clarify or support an institution's response on the application, should that be necessary. The Secretary notes that this provision would not require an institution to provide information such as tenure information contained in faculty records.

Changes: None.

Section 668.13 Certification Procedures

Requirements for certification. Comments: A few commenters objected to the proposal that an institution could be refused full certification that the institution meets the standards of subpart B and may participate in the Title IV, HEA programs because of a problem identified at one of its branch campuses. These commenters suggested that it was not fair to restrict the certification for an institution based upon a problem that was identified at its branch location.

Discussion: The commenters misunderstood the purpose of this provision. Section 498(j) of the HEA requires a branch campus, as defined by the Secretary, to be certified under the requirements of this subpart to be included in an institution's participation in a Title IV, HEA program. Thus, a *branch campus* must separately demonstrate to the Secretary's satisfaction that it meets, for example, the factors of financial responsibility and standards of administrative capability. The commenters should note that the Secretary has defined *branch campus* narrowly, in part for this reason, in the Institutional Eligibility regulations. A more complete discussion of the implications of meeting that definition is found in those regulations.

Changes: None.

Comments: Several comments were received recommending that an institution's financial aid officer be included in the list of personnel that are required to have precertification training.

Discussion: Pursuant to the administrative capability standards set out in § 668.16, every institution is required to designate a capable individual that is responsible for administering the Title IV, HEA programs at the institution. This designated individual, who is usually a financial aid administrator, is required to have precertification training.

Changes: None.

Period of participation. Comments: A few commenters suggested that the Secretary provide greater detail in the regulations concerning when an institution would receive full certification for a period of less than four years.

Discussion: As noted in the discussion for the proposed regulations, the full four year certification period will generally be used for institutions. There may be a limited number of times when an institution would receive a shorter period of full certification, based upon the specific circumstances presented. One instance where a shorter period of full certification would be used is where an institution has submitted a materially complete application for renewal in a timely manner, but no decision is issued before the institution's certification expires. In that instance, as explained in the discussion concerning provisional certification below, the institution's full certification would be extended on a month to month basis until a decision on its application was issued. Other situations will arise where a certification of less than four years will be appropriate, but it is not feasible to try and identify such infrequent actions

by referencing them specifically in the regulations.

Changes: None.

Provisional certification. Comments: Several commenters were concerned that the proposed implementation of provisional certification in the regulations was very broad, and would impose hardships on a number of institutions. The commenters suggested that the Secretary treat the administrative capability and financial responsibility requirements as indicators of instances where provisional certification could be used, but would not necessarily be required if the institution could demonstrate that it should be permitted to participate under full certification. Numerous commenters suggested that it was inappropriate to use provisional certification for institutions whose cohort default rates exceeded the thresholds set out in the proposed regulations at § 668.16. Other commenters recommended that the regulations be amended to clarify that provisional certification could be renewed.

Some commenters suggested that the regulations be amended to provide for the provisional certification of all institutions in a State where no SPRE has been established. These commenters believed that this use of provisional certification was consistent with the intent of the HEA for the Secretary to monitor institutions more closely in this situation.

Discussion: The Secretary believes it is appropriate to use the administrative capability and financial responsibility thresholds as events that will require provisional certification, rather than as indicators that might or might not result in provisional certification being required. Provisional certification will be used to permit these institutions to continue participating in the Title IV, HEA programs while correcting over time the items that were identified that caused the institution to be placed under provisional certification. The categories and thresholds set out in the regulations provide sufficient notice to institutions of the standards to which they will be held accountable. The proposed mechanism for provisional certification also provides administrative efficiency in reviewing applications for certification, and encourages institutional improvements over time to meet and maintain these standards.

The Secretary has responded to concerns about the cohort default rate measures by adjusting the administrative capability thresholds in § 668.16 that would trigger a requirement that an institution would receive provisional certification based upon its reported cohort default rates. See the section of the *Analysis of Comments and Changes* that addresses administrative capability (§ 668.16). The Secretary intends that institutions that have participated successfully under provisional certification, but who still do not satisfy certain requirements for full certification, will be permitted to renew their provisional certification. No specific changes are needed to reflect this procedure in the regulations, because such decisions will be made in response to the applications for certification that institutions will submit in response to the expirations of their current certifications.

The Secretary agrees that technical changes are needed to make these regulations conform to the requirements of the State Postsecondary Review Program in 34 CFR part 667, and has decided to provide some further explanation here of the consequences to an institution if the State in which the institution is located does not participate in the State Postsecondary Review Program.

Section 494(a) of the HEA prohibits the Secretary from designating as eligible to participate in a Title IV, HEA program any institution seeking initial participation in that Title IV, HEA program, or any participating institution that has undergone a change of ownership resulting in a change of control, as determined under 34 CFR 600.31, if the institution is in a State that does not participate in the State Postsecondary Review Program. The Secretary also is prohibited from designating for initial inclusion in any institution's eligibility for participation a Title IV, HEA programs branch campus located in a State that does not participate in the State Postsecondary Review Program, even if the institution itself is in a State that participates in the State Postsecondary Review Program.

Further, the Secretary may grant no more than provisional certification for participation in a Title IV, HEA program to any participating institution or branch campus in a State that does not participate in the State Postsecondary Review Program.

Currently, all States participate in the State Postsecondary Review Program. The Secretary does not anticipate that any State will fail to comply with the requirements of the State Postsecondary Review Program to the extent that the State will cease to participate in the program. Nevertheless, the regulations need to incorporate these statutory provisions so that institutions may be aware of the potential consequences of a State's failure to participate in the program.

Changes: A new paragraph (e) is added to provide for denial of certification to initial applicants for participation in a Title IV, HEA program and to participants that have undergone a change of ownership resulting in a change of control, if the State in which those applicants or participants are located does not participate in the State Postsecondary Review Program. Under paragraph (e), the Secretary may provisionally certify a participating institution or branch campus in that State. Section 668.13(c)(2)(ii) has also been revised to provide that the provisional certification of an institution under these circumstances expires at the end of the third complete award year following the date of the provisional certification.

Comments: Several commenters voiced concern over the proposed language in the regulations that would subject institutions to provisional certification where the financial responsibility and administrative capability was being determined for the first time. Suggestions were made that schools be exempted from this provision if they had been in operation for a number of years without problems being identified concerning their financial condition or administrative capability.

Discussion: The Secretary believes that the other standards requiring the use of provisional certification are adequate to identify institutions where greater monitoring and procedural restrictions are appropriate. The Secretary agrees that longstanding institutions with no previous problems identified in their administrative capability or financial condition will not require the use of provisional certification where the current audits and application submitted by the institution satisfies the financial and administrative requirements under the regulations. Furthermore, since provisional certification is required for initial applicants and for existing institutions whose financial condition or administrative capability cannot be shown to meet the required standards, there does not appear to be a corresponding need to require provisional certification if a participating institution satisfies the proposed standards when the Department reviews its application for the first time.

Changes: The provision that provided that the Secretary may provisionally certify an institutions if the financial responsibility and administrative capability of the institution was being

determined for the first time has been deleted from these regulations.

Comments: A number of commenters objected to the proposal that provisional certification be used for all occasions where the institution undergoes a change in ownership that results in a change of control. Instead, the commenters suggested that there were numerous instances where a transfer of an institution to a new owner should be viewed as a positive step that should be encouraged by using full certification, especially where the transfer was to an owner that had already established a good track record with the Department. Some comments also recommended that transfers to family members or to employees that had experience operating the institution should not require provisional certification.

Discussion: The Secretary agrees that some transfers to family members or to personnel that own stock in an institution who have also worked for the institution should be treated differently from other changes of ownership that result in a change of control. These transfers to family members or to certain other owners have been exempted from treatment as a change of ownership resulting in a change of control in the regulations codified at 34 CFR part 600. In all other situations where there is a change of ownership resulting in a change of control, the Secretary believes it is appropriate to use provisional certification in order to provide more protection to the Federal interests while the new owner demonstrates the ability to operate that institution successfully. Such concern is especially warranted where a financially troubled institution has been acquired for little or no capital investment by the new owner, because the risk of loss is minimized if the institution fails as a business investment. Even though it may be a positive step for an institution to be bought by a new owner who can provide greater resources and experience in its operations, it is also reasonable to provide for the greater oversight and protection to Title IV, HEA program funds that are available under provisional certification. Also, the period of provisional certification may be established for a shorter period where the particular facts so warrant.

Changes: None.

Comments: A number of commenters were concerned that an institution that had applied for recertification in a timely manner would be placed on provisional certification if the Department had not processed the application before the institution's participation agreement expired. These commenters objected to changing an institution from full certification to provisional certification where the delays were attributable to the Department's review process rather than to a tardy application for renewal from the institution. Some remarks were also submitted by these commenters suggesting that formal notice be required from the Secretary of the expiration date for an institution's period of participation before any such ending date could become effective.

Discussion: The Secretary agrees that delays in processing applications by the Department should not be the cause for transferring an institution from full certification to provisional certification. In such a circumstance where a complete application for renewal was timely submitted, it is appropriate to provide for a mechanism that will continue the institution's full certification on an interim basis. The Secretary has decided to establish a target date for institutions to submit certification renewal applications at least 90 days before the ending date for the institution's current program participation agreement. Provided that the application is materially complete when submitted, the institution's full certification will continue beyond its expiration date on a month-to-month basis until the Department issues its decision on the application. If the institution's application is not approved for full certification, the program participation agreement will expire on the last business day of the month in which the decision is sent to the institution. If the application for full certification is not made at least 90 days before the ending date for the institution's program participation agreement, the institution will only be permitted to participate under provisional certification while an application for recertification is pending. When an institution is notified that its application for recertification was not materially complete when submitted, the Department will exercise reasonable discretion in determining whether to deny the application as submitted or to request additional information, and to determine whether the institution may continue to participate under provisional certification while the application is reviewed.

The Secretary continues to believe that it is appropriate for the institution to monitor the expiration date for its participation rather than relying upon the Secretary to tell it when it must reapply. Although the Secretary may provide routine notices to institutions concerning upcoming expiration dates, the institution will be held responsible for submitting an application for recertification in a timely manner in accordance with the expiration date on its program participation agreement, regardless of whether the institution receives a notice of expiration from the Secretary.

Changes: Section 668.13(b) is amended to provide that full certification will be extended on a month to month basis following the expiration of a program participation agreement where the institution's application for recertification was materially complete, and submitted at least 90 days prior to the expiration date.

Requirements for provisional certification to participate on a limited basis for institutions that are not financially responsible. Comments: A number of commenters stated that an institution should not be placed under provisional certification if the institution satisfied the criteria for provisional certification to participate on a limited basis for institutions that are not financially responsible. These commenters believed sufficient protection of Title IV, HEA program funds was obtained from the required posting of a reduced surety in conjunction with using a funding arrangement other than the advance payment system without the additional requirement of only granting provisional certification to the institution. Several of the commenters also argued that any institution meeting these criteria should be considered to be financially responsible, and therefore not placed under the provisional certification that would trigger heightened monitoring by the Department and by the other members of the triad. The commenters also observed that institutions that were in financial difficulties would probably experience further hardship by being required to post a surety and receive Title IV, HEA program funding through an alternate mechanism.

A few commenters noted that this provision appeared to require provisional certification if an institution did not demonstrate financial responsibility under the general standards of financial responsibility set out in § 668.15(b), and that such a construction of the regulation would mean that institutions demonstrating financial responsibility under the exceptions to the general standards of financial responsibility set out in § 668.15(d) could still be required to use provisional certification.

Some commenters also suggested that the reference to a letter of credit be modified to explain that it would be an irrevocable letter of credit rather than

some other type that the institution could revoke without notice to the Department. These commenters also suggested that institutions could withhold information about the amount of Title IV, HEA program funds disbursed through the institution that would otherwise increase the amount of the letter of credit that would be set based upon the information available to the Department for the institution's prior award years.

Some commenters suggested that the requirement that an institution show that it has met all of its financial obligations during the preceding two award years be expanded to acknowledge that normal business practices would permit institutions to refinance debts to change payment terms or obtain lower interest rates.

Several commenters also stated that the proposed regulation was unfair because it would require provisional certification for any institution that had not demonstrated financial responsibility during the preceding five years, regardless of whether the institution currently demonstrated financial responsibility under its most recent audit. These commenters believed that such a procedure would be unfair because it could penalize an institution that met current financial responsibility standards based upon its prior financial condition. Other commenters suggested that the Secretary should exercise discretion in determining when financial guarantees would be required rather than making them mandatory whenever an institution triggered these provisions.

Discussion: The Secretary disagrees that the standards for provisional certification to participate on a limited basis for institutions that are not financially responsible should be deemed to constitute a sufficient demonstration of financial responsibility that would warrant granting full certification to such institutions. Institutions that are not able to meet the general standards of financial responsibility in § 668.15(b) or the exceptions to the general standards of financial responsibility in § 668.15(d) are in a financial situation that is demonstrably different from their counterparts that do satisfy the requirements under these sections. Institutions that only meet the standards for provisional certification to participate on a limited basis for institutions that are not financially responsible warrant the additional monitoring and protection to Title IV, HEA program funds that provisional certification provides. Even though such funding restrictions and surety postings may be difficult for some institutions that are already experiencing financial restraints, such protections and the heightened ability to act quickly to protect Title IV, HEA program funds are essential for improving the Department's oversight and gatekeeping responsibilities. Provisional certification will permit some institutions to improve their financial operations over time without compromising their administration of the Title IV, HEA programs.

The Secretary would like to clarify that any letter of credit that an institution is required to submit to the Secretary must be in a form and amount acceptable to the Secretary.

The Secretary agrees with the commenters on the provision requiring an institution to have met all its financial obligations during the preceding two award years. The Secretary has decided to clarify this provision in the manner in which a similar provision has been clarified in § 668.15 (see the discussion in § 668.15 on this issue).

The Secretary would also like to clarify when third party financial guarantees or assumptions of liabilities by owners are required. Institutions that demonstrate financial responsibility under the requirements of § 668.15(b) and § 668.15(d) and are in compliance with all other requirements of this subpart generally are entitled to full certification. An institution that, despite meeting the requirements of § 668.15(b) and (d), falls within one of the categories in § 668.15(c)(2) is not considered financially responsible and therefore cannot be fully certified. These categories include a limitation, suspension, or termination by the Secretary or a guaranty agency of the institution's participation at any time within the previous five years or a settlement to resolve such an action. Also included are audit or program review findings during the two most recent audits or program reviews amounting to more than five percent of the institution's Title IV, HEA program funds for a given award year, a citation for failure to submit acceptable audit reports in a timely fashion during any of the previous five years, and a failure to address satisfactorily any compliance problems still identified in program reviews or audits after the institution has exhausted its appeals of those findings. The Secretary considers any of these characteristics sufficiently detrimental to the integrity of the Title IV, HEA programs to provide that an institution meeting them is not financially responsible.

Further, to emphasize the seriousness with which the Secretary views these institutional failings, to protect Federal funds, and to deter institutions from acting in a manner that could cause them to fall within one of these categories, the Secretary will refuse even to provisionally certify such an institution, unless the appropriate additional financial guarantees and assumptions of liability are furnished. In the February 28, 1994 NPRM, the Secretary had also proposed to apply this treatment regarding provisional certification to any institution failing the financial responsibility standards of § 668.15 during the previous five years. The Secretary believes that a modification of this last provision is in order. The Secretary therefore wishes to clarify that any institution that fails to demonstrate financial responsibility under its current audit, and that has failed to do so at least once under the standards in effect during the preceding five years (other than for a reason described in § 668.15(c)(2)) is also required to post financial guarantees and furnish assumptions of liability in accordance with § 668.13(d)(2). This additional safeguard is warranted where an institution does not meet the current standard for demonstrating financial responsibility and has failed to do so at least once during the preceding five years.

The Secretary believes that it is appropriate to put in place a procedure where such financial guarantees and assumptions of liability will be required from institutions that come within the provisions in § 668.13(d)(2). Rather than exercising discretion in whether to require such guarantees at all, the Department will examine the specific circumstances presented by each such institution and set the required amount and terms of the financial guarantees and assumptions of liability in accordance with the regulation.

Changes: The requirements for provisional certification to participate on a limited basis for institutions that are not financially responsible have been amended to make clear that the criteria of this section are not required for an institution that meets the exceptions to the general standards of financial responsibility under § 668.15(d). The regulations have been amended to clarify that any required submission of a letter of credit must be in an amount and in a form acceptable to the Secretary. Section 668.13(d)(2) has been clarified to explain that financial guarantees are only required if the institution comes within the requirements of § 668.15(c)(2), or where the institution fails to demonstrate

financial responsibility under its current audit and has failed to do so at least one other time under the standards in effect during the preceding five years.

Revocation of provisional certification. Comments: A number of commenters complained that the lack of a formal appeal process for revocation of provisional certification was unfair to the institution because it provided much less due process than is available to other institutions under the appeal procedures in subpart G of the regulations. Some of these commenters also indicated that they believed it would be more appropriate to offer provisionally certified institutions the full appeal rights under subpart G of the regulations, and several commenters believed that more extensive appeal procedures were required to revoke provisional certification than were described in the regulations.

Some commenters also suggested that a revocation notice should not be made effective upon the date of the mailing, but either upon receipt by the institution or until a specified number of days after the mailing. A few commenters also recommended that first class mail be used because it is an accepted means of filing legal documents in the court system, or that certified mail be used as an alternative to registered mail.

Many commenters also requested that the provision that provides that an institution may request reconsideration of a revocation of provisional certification be modified to provide that any request for reconsideration of a revocation of provisional certification be decided by someone other than the person issuing the revocation. These comments stated that it was important that such requests for reconsideration be made to a different official because it would be more meaningful than having the request be presented to the person that had already made a decision adverse to the institution.

Discussion: The Secretary disagrees with the commenters that revocations of provisional certification should receive the same appeal procedures given to fully certified institutions under subpart G of the regulations. Institutions receiving provisional certification are being given the opportunity to participate under limiting conditions because a heightened risk to Title IV, HEA program funds has been identified, either by the institution's current financial condition or through prior problems in the administration of the Title IV, HEA programs by the institution or its owners. Furthermore, section 498(h) of the HEA provides that provisionally certified institutions may be terminated if the Secretary determines that an institution is unable to meet its responsibilities under its program participation agreement. This language is significantly different from the requirement in section 487(c)(1)(F) of the HEA that provides that an adverse action against a fully participating institution be determined after reasonable notice and opportunity for hearing. The regulations require that the notice revoking the provisional certification contain the basis for the action, explain to the institution the consequences of such revocation, and detail the procedures required to request reconsideration of the action. The notice and opportunity to request reconsideration of the decision to revoke the institution's provisional certification provide adequate protection to the institution that it will have the opportunity to respond directly to the stated basis for the action, and establish a reasonable mechanism to resolve the dispute in a fair manner. The Secretary believes that such procedure provides an institution with a fair opportunity to be heard, and the final agency decision will be subject to Federal court review to ensure that the action was not arbitrary and capricious.

The Secretary does not agree that a notice of revocation of an institution's provisional certification should be effective on a date other than the date that the letter is sent to the institution. An institution that participates under provisional certification does so with the understanding that it is subject to greater scrutiny with fewer procedural rights when problems are identified. A notice advising the institution that its provisional certification is revoked will identify the reasons for such action and give the institution an opportunity to request reconsideration of that decision. The effective date of the revocation is the date that the notice is mailed; this provides greater protection of Title IV, HEA program funds while still giving the institution an opportunity to have that decision subsequently set aside.

The Secretary agrees that it would be more appropriate to provide that notices of revocation decisions will be sent by certified mail, return receipt requested, rather than by registered mail. The Secretary notes that certified mail is already used to initiate adverse actions against fully participating institutions under subpart G of the regulations, and therefore believes that it is appropriate to standardize this notice requirement for revocations of provisional certification. The regulation also provides that, where practical, more expeditious notice may be provided through facsimile or overnight mail.

The Secretary agrees that the designated department official making the decision concerning an institution's request for reconsideration of a revocation should be different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. This separation of function will ensure that the official making the final decision for the Department is independent from the supervision of the official issuing the initial decision, and this procedural protection strengthens the integrity of the review procedures for revocation of provisional certification.

Changes: A change has been made to provide for notices of revocation of provisional certification to be sent by certified mail. The regulations have been modified to require that the official reviewing a request for reconsideration of provisional certification must be different from, and not subject to supervision by, the official that issued the notice of revocation.

Section 668.14 Program participation agreement.

Comments: Five commenters suggested that an institution's program participation agreement should only cover those branches or locations which are specifically listed in the institution's notice of eligibility. One commenter indicated that this provision makes clear that the program participation agreement applies to each branch campus or location of the institution.

Discussion: The provision emphasizes that the program participation agreement applies only to those branch campuses and locations that meet the applicable requirements of this part; therefore, additional clarification is unnecessary.

Changes: None.

Comments: Four commenters asserted that the regulations should specify that the terminology "special arrangement, agreement, or limitation" applies only to the Title IV, HEA programs, and not any other programs in which the institution participates. Two commenters suggested that the proposed regulations marked a radical departure from existing regulations, and that a "phase- in" period was in order.

Discussion: The Secretary would like to clarify that any "special arrangements, agreements, or limitations" included in an institution's program participation agreement by the Secretary should apply only to those special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA. Considering that the

language for this section of the regulations is for the most part statutory, institutions have had access to this information since July 1992 when the Amendments of 1992 were enacted. The Secretary believes that institutions have had adequate time to set in place any policies or procedures to comply with this section. A "phase-in" period is unnecessary.

Changes: Section 668.14(b)(1) has been amended to clarify that an institution must comply with all special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA. Corresponding changes have been made throughout the sections of 34 CFR 668 and 34 CFR 682 contained in this regulatory package.

Comments: One commenter agreed that a mechanism was needed to ensure that an institution's fund requests meet only its immediate Title IV, HEA program needs, but suggested that such a mechanism should accommodate institutions where funds must first pass through a State agency, adding to the time frame for expenditure. Four commenters indicated that the proposed regulations may necessitate changes in institutions' methods of accounting, programming, banking, fund monitoring, etc. and recommended that institutions should be allowed a reasonable "phase-in" period for the requirements, during which the Secretary should provide significant guidance regarding implementation.

Discussion: The Department's requirements regarding immediate cash needs have not changed with these proposed regulations. They have simply been restated as a criterion of the program participation agreement. These long established rules are explained in many Department publications, and are included in annual Department training sessions. A "phase-in" period for these requirements is unnecessary. As for institutions that must wait for funds to pass through a State agency, these institutions should have already addressed this issue in an effort to comply with existing Title IV, HEA program guidance.

Changes: None.

Comments: A large group of commenters was concerned that the information provided to the Secretary, SPRE, guaranty agency, accrediting agency or State licensing agency relative to an institution's administrative capability and financial responsibility may be disclosed to the public, and recommended that the Secretary provide a guarantee that such information must be kept confidential by the above-listed parties. Three commenters suggested that the Secretary develop a specific format for the reporting of data and that the data be sent directly to the Secretary for dissemination to any of the above organizations that might need it.

Discussion: The Secretary does not have the authority to create or supersede laws that may relate to disclosure of potentially sensitive information. Such laws vary from State to State and from agency to agency; it would be inappropriate for the Secretary to address such an issue. As for data provided directly to the Secretary, if that data were discloseable under a freedom of information request, the Secretary would have no choice but to release the information if it were requested.

It is important to note that the provision only requires institutions that have been selected for review under the State Postsecondary Review Program process to provide the above-referenced information to SPREs. By the nature of the selection procedures and because of the limited number of institutions which the Secretary anticipates will meet review-triggering criteria, the Secretary believes most institutions will not be requested to provide this information and therefore will not need to worry about potential public disclosure.

The Secretary believes a specific format for reporting and a centralized location for collection of data are unnecessary at this time. As the information must only be provided upon request, each organization can specify exactly what information is needed from an institution and in what time frame. A format specified by the Secretary might cause some institutions to be burdened with providing information that is not needed.

Changes: Section 668.14(b)(4) has been amended to provide that an institution must provide information relating the administrative capability and financial responsibility of the information to a SPRE if the institution was referred by the Secretary under 34 CFR 667.5.

Comments: Four commenters recommended that SPREs and guaranty agencies be added as parties to whom institutions must submit reports of information required by the Secretary. Four commenters also suggested including Federal consolidation loans in the list of loan programs described in this section.

Discussion: Other provisions in the regulations require reports to be provided to SPREs and guaranty agencies. To restate those requirements here would be redundant.

Federal consolidation loans are not a Title IV, HEA program in which an institution must be certified for participation and consequently should not be included in this section.

Changes: None.

Comments: Three commenters indicated that the proposed regulations placed responsibility on institutions for knowing how much money students may have borrowed while attending other institutions.

Discussion: The commenters are correct. Institutions do have a responsibility to determine the amounts of Title IV, HEA program funds students have received attending other institutions by obtaining financial aid transcripts from those schools. Past abuses with this system, caused chiefly by institutions which did not recognize the importance of financial aid transcripts, have created the need to tie this requirement to an institution's continuing participation in the Title IV, HEA programs. While the Secretary does not anticipate that an institution would be penalized for information of which it was not aware, it must be stressed that an institution must do everything in its power to ensure that no loan is certified for an amount in excess of a student's allowable limits.

Changes: None.

Comments: Two commenters recommended that applicable institutions not only be required to make graduation and placement statistics available to prospective students, but also to publish the information in their catalogs. One commenter suggested that an institution only be required to provide to prospective students the job licensing requirements for its programs relative to the State in which the school is located.

Discussion: The Secretary believes the regulations go far enough in requiring the institutions to make graduation and placement rates available to prospective students. While some institutions may elect to publish this information in their catalogs for convenience, such a measure is not required. Concerning the comment on State licensing requirements for jobs, neither the statute nor the proposed regulations indicate that an institution must provide the criteria for any State other than that in which the school is located.

Changes: None.

Comments: Three commenters are concerned that early deadlines for applications for State grants may affect an institution's ability to inform eligible student loan borrowers about the availability and eligibility of those borrowers for State grant assistance in the State in which the institution is

located. Two commenters are concerned that in having to inform students from other locations of State grant information pursuant to their States, institutions will be required to be aware of State grant information for a large number of States.

Discussion: If an institution is aware that a student has enrolled or applied for financial assistance after the application date has passed to receive State grant assistance that year in that State, it must simply inform the student that he or she is not eligible for those funds, and may apply the following year prior to the deadline. Accordingly, the institution will then process the student's aid package with no consideration of State grant funds for that award year. The Secretary does not understand how this requirement could have any adverse affect on an institution. In fact, it is the Secretary's understanding that many institutions already publish State grant application information in their catalogs or disseminate the information through their financial aid offices. Regarding students from other States, institutions are indeed required to inform them of State grant assistance available to them from their own State; however, the institutions are not expected to be experts on this information, but rather to be sources of general information from which students may learn who to contact in their State to apply for assistance. The Secretary does not believe this requirement is unduly burdensome on institutions.

Changes: None.

Comments: A large group of commenters was concerned that requiring newly participating institutions or institutions that have changed ownership to implement a default management plan equal to Appendix D, for two years, was overly restrictive. Most suggested that institutions be allowed to submit an alternate plan to the Secretary for approval. Many of the commenters recommended that in the case of ownership changes, institutions with default rates under a certain percentage (10% or 20%) should be exempt from the requirement.

Discussion: The Secretary's proposal that newly participating institutions and institutions that have changed ownership use Appendix D as a default management plan was made only after careful review by the Department showed that Appendix D is effective in helping reduce student defaults. Moreover, Appendix D is simply a basic default management plan. There is nothing in the statute or regulations that would preclude an institution from adding elements. In fact, the Secretary applauds such creative efforts and believes they may help to further reduce student defaults. The Secretary believes institutions with low default rates should not be exempted because there is no reason to believe under different ownership the rates would remain as low.

Changes: None.

Comments: Four commenters want to expand the regulations to include Social Security Administration, Immigration and Naturalization Service, Law Enforcement Agencies and Direct Lending Contractors as parties that are authorized to share information pertaining to an institution's Title IV, HEA eligibility or participation, or pertaining to fraud and abuse.

Discussion: The Secretary does not have authority to include these organizations in the regulations as they do not appear in the statute.

Changes: None.

Comments: Many commenters argued that the provisions in this section governing an institution's ability to employ or contract with individuals or organizations to administer any aspect of the Title IV, HEA programs or the receipt of funds under those programs go far beyond the scope of section 487(a)(16) of the HEA. These commenters pointed out that the statute referred only to individuals or organizations that have been convicted, have pled *nolo contendere* or guilty to a crime, or that have been judicially determined to have committed fraud involving Title IV, HEA program funds and not to administrative determinations, other material violations of law, or misuse of State, local, or Federal government funds (other than Title IV, HEA program funds) with respect to an institution's ability to employ an individual or organization. One commenter supported the Secretary's proposed restrictions. Five commenters were concerned that an institution may be penalized for hiring or contracting with a party convicted of fraud involving government funds or a party that has been terminated from participation under the HEA for an infraction involving government funds, even if they were unaware of the conviction or termination. One commenter was concerned that the institution may be penalized if it hired or contracted with such a party, even if that person's job was to cut grass or collect garbage.

Discussion: The Secretary disagrees with those commenters who argued that the provisions in this section restricting an institution's ability to employ or contract with certain individuals or organizations go beyond the authority of the HEA. Section 487(a)(4) expressly requires an institution to agree in its program participation agreement to comply with financial and fiscal responsibility requirements established by the Secretary. These requirements are part of the financial responsibility provisions found in § 668.15(c). In proposing the additional restrictions in the NPRM, the Secretary provided justification that these additional safeguards were necessary to protect the Title IV, HEA programs and institutions participating in those programs. The Secretary still believes those justifications to be valid. The regulations state in regard to a participating institution's responsibility, it will not "knowingly" employ or contract with an individual, agency, organization, etc. which has violated any laws involving any government funds. The Secretary believes the regulations are clear that an institution will not be penalized for information of which it is not aware. Furthermore, in safeguarding Federal funds, the Secretary is concerned with *any* parties that may have previously violated a law involving government funds, even if these parties now perform janitorial or maintenance duties. By the provision, an employment or contract relationship with such a party is not appropriate, and by "knowingly" entering into such a relationship an institution may well jeopardize its continued participation in the Title IV, HEA programs. The Secretary believes the regulations make this clear as well.

Changes: None.

Comments: Three commenters recommended that the regulations be amended to prohibit contracts with institutions or third-party servicers that have been terminated for any reason, not just for a reason involving government funds.

Discussion: The purpose of this provision is to safeguard Federal funds, not to punish institutions or servicers that may have been terminated. For that reason, the Secretary believes the provision is adequate in its present form to satisfy the intent of the statute.

Changes: None.

Comments: Five commenters advised that requiring institutions to complete surveys conducted as part of the Integrated Postsecondary Education System (IPEDS) in a timely manner and to the satisfaction of the Secretary could be burdensome to institutions, especially if the school did not have a large staff or computer systems capable of collecting information. Three of the five commenters recommended that the Secretary design forms or specify

formats to make data collection easier. One of the five commenters suggested that the Secretary accommodate institutions not yet computerized with more time to complete the surveys.

Discussion: The language for this provision is statutory and may not be changed by the Secretary. In addition, the Secretary believes that any survey conducted as part of IPEDS is necessary and will provide valuable information to the Department. Those offices that collect IPEDS information work diligently to create consistent, easy-to-use forms and formats, not just because this makes data collection easier for the institutions, but also because it makes tabulating and sorting of the information easier. The Secretary does not believe this requirement is unduly burdensome to institutions.

Changes: None.

Comments: One commenter suggested that by not allowing institutions to impose penalties on students unable to meet their financial obligations due to disbursement delays for loan proceeds, this provision would force institutions to "carry" unpaid students indefinitely, creating a financial burden. One commenter suggested it was not the intent of the statute for an institution to allow an unpaid student to remain enrolled if the delay in disbursement of loan proceeds was caused by the student's failure to comply with a program requirement. One commenter recommended that the regulations stipulate that institutions would not be prohibited from withholding academic transcripts and other graduate services from students as the result of delayed disbursement of Title IV, HEA program funds.

Discussion: The language of this requirement is for the most part statutory, and very clear in its intent. The Secretary does not believe this requirement will cause a financial burden to institutions as this situation should not frequently occur if an institution is complying with all applicable regulations.

It is not probable that a student would deliberately cause the delay of his or her loan disbursement by not complying with the instructions of the institution or lender; nevertheless, if such a situation occurred, the institution would not be prohibited from imposing penalties on the student.

The withholding of a student's academic transcript or other graduate services is considered a penalty by the Secretary.

Changes: None.

Comments: A very large number of commenters suggested that the proposed regulations went beyond the scope of the statute by prohibiting any type of incentive payments, particularly those based on "retention." Most of those same commenters, plus another large group, felt that token gifts to students and alumni should be excluded from this requirement.

Discussion: The Secretary believes that even in incentive payment structures based on retention there is room for abuse and, in fact, has seen evidence of such abuse. Since July of 1992 when the Amendments of 1992 were enacted, many institutions have opted to change to retention-based pay for admissions personnel. In that time, the Secretary has seen evidence of lowered satisfactory progress standards and in extreme cases, falsified attendance and leave of absence requests, all in an effort to keep students enrolled. In many cases, these practices were designed by admissions personnel who were duly paid after the student passed a retention mark. After that mark, the students were dropped. Furthermore, the Secretary has evidence that some of these students were admitted using falsified ability-to-benefit tests, which further ties the issue of retention to enrollment. The Secretary believes that reputable and conscientious institutions can develop other creative ways to reward their employees that will have no direct or indirect relationship to success in securing enrollments. Regarding token gifts for students and alumni who refer other students, the Secretary, after reviewing the comments, has decided that such practices are widespread and will cause no harm if the tokens are not monetary, and limits are placed both on their value and frequency of distribution.

Changes: The Secretary has amended § 668.14(b)(22) to allow that token gifts may be given to students or alumni for referring other students for admission to the institution, as long as:

(1) the gift is not money, check or money order;

(2) no more than one such gift is given to any student or alumnus; and

(3) the value of the gift is no more than twenty-five dollars.

Comments: Seven commenters asserted that most institutions that offer athletically related student aid are currently audited by the National Collegiate Athletic Association (NCAA) and the Office of Management and Budget (OMB), and that the regulations should be amended to state that compilations and audits which together satisfy NCAA and OMB also satisfy the requirements of paragraphs (d) and (e) of the regulation. One commenter indicated that the proposed regulations paralleled NCAA audit requirements and compliance should not pose a problem for member institutions. One commenter pointed out that a "compilation" is a term defined under Statements on Standards for Accounting and Review Services No.1 and only provides a representation without any assurances on the statements. The commenter suggested that the Secretary require preparation of a schedule, and have that schedule audited.

Discussion: The Secretary believes that the requirements of the statute and regulations stand on their own. It is up to each institution to determine if a particular audit or compilation prepared for a different organization satisfies the conditions specified in paragraphs (d) and (e) of the regulation. The Secretary believes it is unwise to give blanket approval to audits and compilations which, although at present may satisfy the regulation, may not at a later date. Furthermore, the language of this provision, as written, covers all institutions, even those which are not NCAA members.

Changes: None.

Comments: Seven commenters indicated that by making the effective date for participation in the Title IV, HEA programs the date that the Secretary signs an institution's program participation agreement, there may well be a lapse of time from the expiration of the prior program participation agreement during which the institution may be ineligible. The commenters felt this may create financial problems for both institutions and students, and some recommended that program participation be made retroactive to the date of application. Some other commenters felt program participation should be made retroactive to the date of the certification review.

Discussion: The language for this provision is statutory. The Secretary has no reason to believe that Congress had any other intent when the law was drafted. However, the Secretary understands the concern of commenters that an institution's program participation agreement might expire after an institution has submitted a renewal application but before the Secretary signs a new program participation agreement. The Secretary has modified § 668.13 to address that concern. See the section of the *Analysis of Comments and Changes* that addresses certification procedures (§ 668.13).

Changes: None.

Section 668.15 Factors of Financial Responsibility

General. Comments: A few commenters supported all of the Secretary's proposed regulations in § 668.15. One of the commenters recommended the inclusion of a debt to net worth ratio in considering an institution's financial responsibility. One commenter, who disagreed with the Secretary's rationale for increasing the current ratio requirement from 1:1 to 1.25:1, suggested that the Secretary consider other types of financial analysis such as a "Z Score" in evaluating an institution's financial resources. Another commenter, who also disagreed with the Secretary, believed that tangible net worth was not an appropriate indicator of financial responsibility and recommended that the Secretary consider cash flow statements in his evaluation.

Discussion: The Secretary considered a number of alternative ratio tests that could be used to evaluate an institution's financial condition. While the Secretary does consider minimum capitalization an important factor in determining an institution's financial responsibility, he has elected not to put such a standard into regulation at this time. Based upon the limited information presented by in the commenters, the Secretary is not convinced that a "Z Score" would be an appropriate measure of financial responsibility for an institution. However, the Secretary will monitor the financial information gathered in accordance with these regulations to determine whether it would be appropriate to require either additional, or alternative cash flow statement criteria as a factor in determining financial responsibility.

Changes: None.

Comments: Many commenters responded to the Secretary's request for comments regarding the acceptability of a "bond rating" as sufficient indicia of a nonprofit institution's financial responsibility. The majority of the commenters expressed support of the use of a bond rating as a means of evaluating financial responsibility. One commenter suggested that the Secretary consider an institution to be financially responsible if it is able to demonstrate that it has a debt financing arrangement that is acceptable to the College Construction Loan Authority (Connie Lee). Another commenter believed that the Secretary should broaden the definition of acceptable bonds to include other than general obligation bonds because certain types of revenue bonds issued by pubic nonprofit institutions also have ratings by nationally recognized rating agencies. One commenter believed that the Secretary should expand the provision to exempt for-profit institutions with an acceptable bond rating.

Discussion: The Secretary believes that a superior bond rating may serve as an effective proxy for demonstrating an institution's financial responsibility. An institution that has the capacity to issue a top rated debt security is, in general, considered to have the financial resources necessary to meet all of its financial obligations. The Secretary believes that the debt paying ability of an institution, as determined by a comprehensive credit review conducted by a nationally recognized statistical rating organization, is representative of the institution's financial health. For an institution's bond rating to serve as an acceptable proxy, the institution must have the financial resources required to obtain a rating at or above the second highest level used by the rating organization. Furthermore, the Secretary requires that an institution provide evidence that the issue has been rated without consideration of any insurance, guarantee, or credit enhancement that may have been used to lower the institution's cost of capital. The Secretary requires that an institution provide an actual rating from a nationally recognized statistical rating organization. Since Connie Lee is not a rating organization, financing arrangements that are acceptable to Connie Lee are only eligible for consideration to the extent that they are separately rated by a nationally recognized rating organization that is acceptable to the Secretary. The Secretary agrees with commenters that the substitution of a bond rating for an institution's having to demonstrate financial responsibility should be expanded to include other forms of rated debt such as revenue bonds. The Secretary also agrees that this provision should be applied to both nonprofit and for-profit institutions.

Changes: Sections 668.15(b)(7)(ii), (b)(8)(ii) and (b)(9)(v) have been added to provide that the Secretary shall consider an institution to be financially responsible if the institution is able to demonstrate to the satisfaction of the Secretary that it has an outstanding debt obligation which has been rated by a nationally recognized statistical rating organization at or above the second highest level rated by that organization. To be acceptable to the Secretary, an institution's debt must have been rated without consideration of any insurance, guarantee, or credit enhancement employed by the institution to lower its cost of capital.

General standards of financial responsibility. Comments: A few commenters expressed concern that the Secretary's requirement that an institution submit an audited financial statement without qualification or disclaimer was particularly burdensome because the commenters believed an institution is likely to be faced with a "qualified" statement as a result of adopting new accounting standards mandated under FAS 117.

Discussion: The Secretary believes that the reliability of any financial statement is dependent upon the ability of the institution's independent auditor to determine and report that the information contained within the financial statements is a fair representation of the institution's financial resources. The auditor will issue a qualified statement if the auditor is unable to determine that the information is a fair representation because of any uncertainty. It is the institution's responsibility to identify the cause of the uncertainty and make every reasonable effort to correct it.

Changes: None.

Comments: Many commenters believed that the requirement for an institution to be current on any debt service should be clarified to take into consideration legitimate disputes that may arise in the normal course of business. Several commenters believed that a single instance or even a few instances of late payments would not necessarily be indicative of financial problems. Many commenters believed that an institution should be considered current, despite not having made scheduled payments, if the institution is currently involved in negotiations with creditors to restructure or reschedule outstanding debt. A number of commenters suggested that a pattern of late payments on the part of an institution would be a more reliable indicator of financial difficulty than would a single instance of failure to pay. Many of the commenters suggested that the Secretary rely on the judgement of the institution's independent auditor in determining whether or not such a pattern of late payment exists.

Discussion: In general, the Secretary believes that an institution's ability to meet its financial obligations when due is indicative of financial health. However, the Secretary recognizes that over the normal course of a business cycle an institution may occasionally delay payment to certain trade creditors as a result of contractual disputes. Alternatively, the Secretary recognizes that an institution that is experiencing

cash flow problems will typically delay payment to creditors in an effort to conserve cash. Clearly, if the cause of an institution's delay in making payment is contractual in nature, than the Secretary expects that this would occur infrequently. If the cause is related to insufficient cash flow, then the Secretary would expect to observe a recurring pattern of late payments to creditors. The Secretary believes that payments related to long term liabilities such as term loans from financial institutions, bonds, debentures, or notes payable which become due beyond one year are of significant importance because the institution's assets are typically pledged, encumbered, or assigned to collateralize such obligations. The Secretary agrees with the commenters that an institution is current, despite having failed to make scheduled payments, if the institution has reached an acceptable agreement with creditors to substantially reschedule or restructure the outstanding debt. However, the Secretary believes that a failure, on the part of the institution, to reach an agreement with creditors after a reasonable period of time exposes the institution to potential financial and legal problems that may adversely affect the quality of the institution's educational program. Information about the institution's outstanding debt is already provided by the institution in its audited financial statement. Furthermore, the institution's independent auditor has a responsibility to disclose any failure, on the part of the institution, to be in compliance with loan agreements in existence on the date the institution's balance sheet was prepared.

Changes: Section 668.15(b)(4) is amended to provide that an institution is not considered to be financially responsible if the institution is not in compliance with all loan agreements in existence on the date the institution's financial statements are prepared. However, the Secretary considers an institution to be current in its debt service if the institution can provide evidence that it has reached a mutually acceptable agreement to restructure or reschedule its obligations. If an institution is unable to reach a mutually acceptable agreement with creditors after 120 days and the institution's failure to pay its obligations has resulted in a creditor taking legal action to attach the institution's assets or obtain a judgment, then the institution shall not be considered to be financially responsible.

Comments: Many commenters felt the requirement that an institution maintain a cash reserve was excessive. A few commenters supported the requirement of the cash reserve and provided suggestions for alternative methods of calculating the amount of the reserve requirement. A majority of the commenters who expressed a concern believed that the establishment of a separate reserve account would significantly reduce available working capital funds that might be better applied to meet other operating expenditures. Many commenters believed that nonprofit institutions should be allowed to include amounts held in the cash reserve in the calculation of the ratio of current assets to current liabilities. Some commenters supported the Secretary's position that the cash reserve account should be excluded from the calculation of the ratio for nonprofit institutions. A number of the commenters thought that a more appropriate requirement would be a cash reserve that is based on the institution's actual refund experience. A few commenters suggested that the cash reserve requirement be based on the residual of total unearned tuition liability less accounts receivable, with an adjustment for refunds made under the *pro rata* refund policy. Many commenters suggested that the calculation of the reserve requirement on the basis of deferred tuition revenue seemed arbitrary and indicated that it would vary greatly among institutions depending on the timing of enrollments and the preparation of year end financial statements. Other commenters recommended that the Secretary consider an annual financial statement along with cash flow projections for the next three enrollment periods as an alternative to the cash reserve. A few commenters believed that the definition of acceptable forms of the cash reserve should be expanded to include money market instruments, that are highly liquid and trade in an active secondary market. Overall, the majority of the commenters believed that the provision should be removed.

Discussion: Section 498(c)(5) of the HEA requires the Secretary to establish requirements for an institution to maintain sufficient cash reserves to ensure repayment of any required refunds. The Secretary proposed that a cash reserve based on the institution's deferred tuition revenue would be appropriate because the balance of the deferred tuition account generally reflects amounts collected by, or contractually obligated to be received by, the institution in advance of providing educational services. The Secretary believed an institution could reasonably expect that some students would withdraw prior to the completion of their educational program and be entitled to a refund of amounts paid for services not yet rendered.

The Secretary believes that the commenters are correct in observing that the balance of deferred tuition revenue would vary among institutions depending on factors that have little to do with actual refund payments by the institution, such as enrollment periods and fiscal year ends. The Secretary believes that it would be more consistent with the intent of the HEA for this provision to match the reserve requirement more closely with an institution's historical refund experience. The Secretary believes that a cash reserve balance equal to one quarter of the institution's previous year's total refund expenditure would be sufficient to satisfy the institutions cash reserve requirement because that amount represents approximately three months potential refund expenditure.

In order to establish the appropriate amount for the cash reserve, the institution will have to disclose, in a note to its audited financial statements, the dollar amount of total refunds paid in both the current fiscal year and prior year. The Secretary does not consider internally generated cash flow projections as reliable indicators of an institution's ability to meet the cash reserve requirement. The Secretary does not consider liquid investments, such as money market funds, to be equivalent to cash because such investments do not generally have a maturity date and are therefore more characteristic of equity investments.

While the Secretary acknowledges the criticism from the commenters that the establishment of a cash reserve reduces available working capital, the Secretary points out that the establishment of a reserve account requires the accumulation of cash on a one-time basis. Contributions to the reserve account would be required only to the extent that enrollment levels and refund experiences vary. On a continuing basis, the resulting net outflow of working capital would be the same despite the establishment of a cash reserve.

The Secretary agrees with the commenters that nonprofit institutions should be treated consistently with for-profit institutions, and allowed to include the cash reserve in the calculation of the liquidity ratios. The reserve account is intended to provide an immediately available source of cash that must be available to make refunds at any time. It is reasonable to expect that if an institution were to close at other than the end of an academic

period that the cash reserve funds would be used to pay the institution's refund liability. Since unpaid refunds are generally recognized as a current liability it is appropriate to recognize, in the institution's ratio calculation, those assets which would actually be used to offset the liability in the event of liquidation.

The regulation will restrict the type of account in which the cash reserve must be kept because it must be maintained at a certain minimum level at all times. Accordingly, an institution may not hold reserve funds in any type of investment that is subject to significant price variation. The Secretary believes only cash held in the form of a demand deposit in a federally insured bank account, or short term investments secured by the full faith and credit of the United States meet this criteria.

Changes: The Secretary amends the cash reserve requirement in § 668.15(b)(5) to require an institution to maintain at all times, a cash reserve equal to one-quarter of the total dollar amount of refunds paid by the institution in the previous fiscal year. Such reserves shall be maintained in a cash deposit in a federally insured bank account or, in U.S. Treasury securities, backed by the full faith and credit of the United States having an original maturity of three months or less.

Comments: Many commenters believed that the requirement that for-profit institutions maintain a ratio of current assets to current liabilities of 1.25:1 was burdensome and exceeded the scope of the statute. One commenter supported the ratio requirement and suggested that a current ratio of 1.6:1 up to 2:1 might be a more appropriate standard of financial responsibility. The majority of commenters who expressed concern regarding the ratio requirement indicated that they believed the Secretary's justification for applying a higher standard to for-profit institutions was unsupported and discriminatory. Many commenters believed that the Secretary should not attempt to distinguish between for-profit and nonprofit institutions. Among the commenters who expressed a concern, most believed that the establishment of separate ratio tests for each type of institution was not required by the HEA. Some of the commenters believed that the exclusion of uncollateralized related party receivables from the calculation of current assets was inconsistent with generally accepted accounting principles. A number of commenters suggested that a phase-in period ranging from twelve months to more than five years should be granted to allow institutions time to build up working capital reserves in order to comply with this standard.

Discussion: Many commenters believed that in applying this standard the Secretary was effectively mandating that for-profit institutions divert available funds away from capital assets such as facilities, supplies, and equipment and into lower yielding short term investments. While the Secretary recognizes the possibility that a higher current ratio requirement could theoretically lead to greater inefficiencies in the use of funds, the Secretary believes that higher levels of working capital afford greater financial flexibility to institutions and thus provide greater protection against the possibility of unexpected closure. The Secretary believes that Congress intended to ensure through regulation that students are afforded every reasonable protection with regard to their attendance at an institution through which they are receiving HEA funds. The Secretary also believes that the numerous fundamental differences in accounting and funding methods for nonprofit and for-profit institutions provide sufficient justification for the application of different standards to them.

However, the Secretary believes that a change in the current ratio requirement is appropriate to take into consideration differing financial and operating structures while employing similar standards for both for-profit and nonprofit institutions. In order to implement a uniform standard that may be used for different types of institutions, the Secretary believes that it is appropriate to exclude certain assets and liabilities from the calculation of the analytical ratios. As discussed in more detail below, the Secretary believes institutions that are currently in compliance with the existing standards of financial responsibility will not require a grace period to meet the new standards.

Changes: In §§ 668.15(b)(7)(i)(A) and (b)(8)(i)(B), the Secretary has replaced the current ratio requirement of 1.25:1 with an acid test ratio of 1:1, representing the ratio of the sum of cash and cash equivalents, and current accounts receivable divided by current liabilities. In applying this standard, the Secretary excludes from the ratio calculation all unsecured or uncollateralized related party receivables as well as all other assets not specifically identified in the above ratio calculation.

Comments: Several commenters were concerned that the Secretary is involved in attempting to set accounting standards by requiring classified statements of financial position for nonprofit institutions reporting under Financial Accounting Standards Board Statement 117 (FASB 117), Financial Statements for Not-for-Profit Organizations.

Discussion: The Secretary is aware that presenting the statement of financial position of a nonprofit institution as a classified statement of financial position is a matter of management decision. However, during the negotiated rule making process, the need for comparable financial responsibility and accounting standards became evident. This need must be reconciled in some manner, despite the varying accounting standards between for-profit and nonprofit entities. The Secretary does not permit this information to be presented in a supplementary schedule because supplementary schedules are not subject to audit tests, as are notes to the financial statements. The information concerning current assets and current liabilities does not have to be included as part of the audit but may be included in the notes to the financial statements. Preparation of a classified statement of financial position is included as an option under FASB 117. The Secretary is therefore not setting standards but merely requiring that presentation be made in accordance with one of those options in particular.

Changes: None.

Comments: Many commenters believed that implementation of the proposed regulations should be delayed for at least a year, with most commenters expressed stating that the increased current ratio requirement and cash reserve requirement would require institutions to accumulate additional cash or other liquid assets.

Discussion: The Secretary believes institutions that are in compliance with the current standards for financial responsibility will not require a significant period of time to implement the proposed changes. For many institutions, the acid test ratio proposed by the Secretary will measure exactly the same elements as the former current ratio did. The establishment of a separate cash reserve should not impact the calculation to a great extent because the cash reserve balance will be included in the ratio calculation. Because the acid test ratio is a more stringent measure of liquidity, the Secretary only requires that an institution demonstrate parity between its most liquid assets and its current obligations. The accumulation of significant liquid assets would generally not be required by an institution. The Secretary believes that it is reasonable to

expect that an institution has at least as much cash on hand and current receivables as it does current obligations.

Changes: None.

Past performance of an institution or persons affiliated with an institution. Comments: Two commenters were concerned about the proposal to expand the requirements whereby an institution is not considered to be financially responsible if an individual, who exercises substantial control over any other existing institutions or defunct institution or third-party servicer, owes a liability for a violation of a Title IV requirement, and is not making payments according to an agreement established with the Secretary to repay the liability. Several commenters wanted all references to a member or members of a person's family deleted from the regulations citing that people should not be held financially or legally responsible for the actions of members of their family who have reached their majority. Another commenter was concerned about the inclusion of a member of the person's family without regard to whether there is any partnership between the individuals and felt that this requirement unnecessarily broadens the scope of the requirement. Several commenters suggested that the percentage of ownership interest used to establish substantial control over an institution or third-party servicer be set at 50 percent rather than 25 percent stating that a 25 percent ownership interest does not mean that the person has control of the business.

Discussion: Section 498(e)(4)(B) refers to audit findings of more than 5 percent of an institution's Title IV, HEA program funds for any award year. The Secretary considers this statutory provision to be designed to require the consideration of the loss of that amount of Title IV, HEA program funds, regardless of whether that loss was identified from an audit or as the result of a program review.

The Secretary considers the criteria in the provisions of § 668.15(c)(2) to be indicative of serious problems with financial responsibility. An institution in one of these categories has already failed to comply properly with the Title IV, HEA program requirements and has had the opportunity, during its appeal process or other negotiations with the Department's officials, to demonstrate any mitigating circumstances that might have justified reducing or eliminating the sanction or finding. The Secretary agrees with the commenters who suggested that one of the categories of past performance problems should be revised to reflect a failure of an institution to resolve satisfactorily any significant compliance problem.

The Secretary is satisfied that citing an institution for a failure to submit acceptable required audit reports in a timely fashion is a better standard of past performance problems than a final determination. A final determination is issued only after an acceptable audit report has been submitted and the findings have been formally issued to the institution. An institution can be cited for failure to submit an audit report in a timely fashion, and an institution can have its audit report returned because the report is unacceptable. These actions do not imply that the institution has committed any other violations of Title IV, HEA program requirements, but it is essential for the Secretary to have acceptable audit reports on time so that the Secretary can evaluate whether the institution is appropriately administering its participation in the Title IV, HEA programs.

Changes: The criterion in paragraph (c)(2)(iv) of this section has been revised to provide that the failure to resolve satisfactorily any significant problem identified in a program review or audit report causes an institution not to be considered financially responsible.

Exceptions to the general standards of financial responsibility. Comments: Three commenters suggested that performance bonds should be accepted to meet the standard for surety amounting to at least 50 percent of total Title IV HEA program funding under the statute. The commenters contended that performance bonds may provide equal, if not better, protection to the Secretary than letters of credit because it is often possible to collect on performance bonds even after the expiration date.

Discussion: The Secretary has determined that the level of protection afforded by performance bonds is not sufficient due to the relative difficulty in collecting against such instruments compared to recoveries under a letter of credit. In some instances involving school closures where a performance bond was in place, the Secretary might be required to submit and document claims on a student-by-student basis before a third party before collecting the full amount of institutional liabilities. Collection under an irrevocable letter of credit has proven to be reliable and effective in protecting the federal interests.

Changes: None.

Comments: A number of commenters responded to the Secretary's request in the February 28, 1994 NPRM for specific standards that might be employed to measure the acceptability of a State's tuition recovery fund. Several commenters recommended that the Department only require states to certify that the fund can pay all required refunds on behalf of schools that close precipitously. Some of the commenters recommended that the Secretary take into consideration the success of various teach-out measures which exist in the various states. One commenter recommended removal of the exemption because many charges associated with attending an institution that are properly included in refunds are not considered part of tuition, and would not be recoverable by the student in the event an institution closes. The commenter went on to recommend that the Secretary require an actuarial analysis and certification of full funding before considering a fund acceptable. Some of the commenters believed that a State's tuition recovery fund should be acceptable if the State has taxing authority to require schools to contribute to the fund. One commenter provided the Department with a number of suggestions including: assessing the extent of refund obligation that the fund would cover, the current funding level, maximum fund balance, amounts of annual assessments, amount of annual claims, the authority of the fund's administrator and the historical experience of the fund. One commenter believed that the Department would not effectively be able to evaluate the State's tuition recovery fund. Another commenter suggested that the acceptability of the state's tuition recovery fund should be determined by comparing a State fund's established maximum payout to an individual institution's annual loan volume.

Discussion: In general, the Secretary believes that a State's tuition recovery fund will be found to be acceptable where it has the backing of the full faith and credit of the State and agrees to administer such refund payments in accordance with the requirements of the HEA programs. Based upon historical experience, State tuition recovery funds have been poorly capitalized and fund administrators have little authority to levy assessments. Many of the funds will pay refunds only for students currently enrolled, and not to students that were owed refunds when the institution closed. Other State tuition recovery funds have only provided protection to in-state residents and, in general, have capped payments at a predetermined maximum level without regard to the refund owed under the HEA programs. Some problems have also arisen where refunds were being

made directly to students on a first-come, first-served basis that exhausted the available funds without apportioning them ratably to the funding sources that should have received the refunds for the benefit of those students.

Given these concerns regarding the acceptability of State tuition recovery funds, the Secretary does not believe it is appropriate to address these criteria through regulation at this time. The Secretary will continue to review this issue to determine what standards, if any, may be set out through regulation.

Changes: None.

Comments: One commenter supported the requirement that an institution maintain a minimum cash reserve equal to 10 percent of deferred tuition revenue but believed that an institution's contributions to a State's tuition recovery fund should be included in calculating the reserve requirement. One commenter noted that the North Carolina General Statute 115D–90 requires an institution to maintain a guaranty bond in an amount equivalent to an institution's deferred tuition revenue at peak enrollment. The commenter believed that students were already afforded reasonable protection under the bond requirement and suggested that the cash reserve be required when no other form of protection exists. Another commenter believed that the Secretary should fully exempt institutions which retain deferred tuition amounts through independently administered escrow arrangements.

Discussion: Section 498(c)(5) of the HEA requires that all institutions maintain a minimum cash reserve. The requirement for an institution to maintain a cash reserve does not apply to institutions which reside in a State that has a tuition recovery fund if that state's tuition recovery fund is acceptable to the Secretary. As discussed above, under certain situations an institution may be able to demonstrate that the State tuition recovery fund to which it contributes will supplant the institution's requirement to maintain a separate cash reserve. In such an instance, the institution will not be able to treat its contributions to the State tuition recovery fund as a portion of its current assets.

Changes: None

Comments: One commenter believed that the requirement for an institution to demonstrate a positive tangible net worth would discourage employee ownership of institutions because amounts invested in employee stock ownership plans (ESOP's) are treated as intangibles and would be excluded from the calculation of net worth. Furthermore, the commenter believed that this particular provision was retroactive because intangibles that may have been acquired several years ago would still appear on an institution's balance sheet. The same commenter believed that the expense item representing amortization of intangibles should be excluded from the calculation of operating loss in view of the Secretary's exclusion of intangible assets from the calculation of tangible net worth. Another commenter requested that the Secretary consider the market value of assets purchased years ago and carried at depreciated book value on the institution's financial statement. One commenter believed that intangibles should be excluded only if the Secretary has reason to believe that the value of these assets does not reflect an arm's length valuation.

Discussion: In general, an intangible asset has no physical existence and depends on some expected future benefit to derive its value. While the Secretary believes that the presence of an intangible on an institution's balance sheet can, and often does, imply some future economic benefit to the institution, the Secretary does not believe that such an asset should be included in the institution's net worth calculation to determine whether the institution demonstrates financial responsibility for HEA program purposes. The Secretary does not believe that it would be necessary to exclude the expense item in the calculation of operating losses. Generally accepted accounting principles require that an institution show asset values at historical cost less accumulated depreciation. In the ordinary course of business, it would not be possible for the Secretary to make a determination regarding the current market value of any asset unless that asset was actually sold in an arm's length transaction or an actuarial valuation was obtained in a manner acceptable to the Secretary. Administrative efficiency and a preference for certainty as documented through the audited financial statements warrant the exclusion of such items.

Changes: None.

Documentation of financial responsibility. Comments: Two commenters felt that audited financial statements should be submitted only once every four years, when most institutions are recertified. The commenters believed that the statute allows for this limited reporting. A few commenters believed that the submission of an audited financial statement should be accepted by the Secretary as sufficient evidence to establish an institution's financial responsibility without regard to the content of the statements.

Discussion: The statute is clear in making annual audited financial statements a requirement. Further, the Secretary believes that the Department has a responsibility to verify on an annual basis that institutions have sufficient financial strength to provide the educational services for which its students are contracting. The Secretary has prescribed an acid test ratio in accordance with § 498(c)(2) of the HEA. The calculation of the acid test ratio is based on information contained in an institution's audited financial statement as prescribed in § 498(4). The Secretary believes that the acid test ratio provides reliable information about the financial condition of an institution.

Changes: None.

Comments: One commenter believed that the requirement that an institution submit a financial statement for its two most recently complete fiscal years should be clarified by the Secretary to require two years of financial information in only the first year following the implementation of the regulation because annual financial statements would be required thereafter.

Discussion: The Secretary requires the submission of two years of financial data on an annual basis. To be considered financially responsible, an institution must demonstrate that it has not experienced operating losses in either or both of its two most recently completed fiscal years that in sum total more than ten percent of the institution's total net worth at the beginning of the first year in the two year period. The Secretary shall make this determination on the basis of financial information submitted by the institution in the form of an audited comparative financial statement representing each of the institution's two most recently completed fiscal years or by comparing information provided by the institution in the form of two individual audited financial statements, each representing one of the institution's two most recently completed fiscal years.

Changes: None.

Comments: Many commenters believed that the requirement for an institution to submit an audited financial statement within four months of the institution's fiscal year end was burdensome because institutions were also required to perform compliance audits during the year at points that did not necessarily coincide with the institution's fiscal year end. As a result

the institution would be required to incur additional audit costs that would be unnecessary if both audits could be performed simultaneously. To accomplish this, the commenters requested that the Secretary extend the period in which audits are due from four months to within six months of the institution's fiscal year end. Two commenters believed that the requirement for an institution to submit an audited financial statement within four months of the fiscal year end contradicted the objectives of the Single Audit Act, and OMB circular A–128 and A–133, because timing differences related to the availability of information would result in an institution being required perform both a financial audit and a compliance audit. Another commenter noted that audits prepared in accordance with the Single Audit Act were acceptable under 34 CFR 668.23(f), and suggested that an audit prepared in accordance with the Single Audit Act ought to be acceptable to the Secretary in other sections of the same regulation.

Discussion: The Secretary believes that a four month period provides ample opportunity for an institution to accomplish the preparation and audit of fiscal year end financial statements. The reliability of any financial statement, as a fair representation of the institution's true financial condition, is largely dependent on the timeliness of the financial report. The Secretary believes that four months is reasonable and notes that many thousands of publicly traded corporations make timely submissions under the 3 month time frame set by the Securities and Exchange Commission for the submission of annual audited financial statements. The Secretary may, however, grant an extension on an individual basis where the institution demonstrates a sufficient basis for the extension. An institution that is required to report in accordance with OMB circular A–128 or A–133 under the Single Audit Act will continue to be governed by the reporting requirements specified under that act.

Changes: The Secretary has added § 668.15(e)(3) to show that audits submitted in accordance with the Single Audit Act meet the reporting requirements under this section.

Section 668.16 Standards of Administrative Capability

Comments: Proposed changes to this section generated many comments. Some commenters asserted that many of the proposed standards go far beyond the issue of administrative capability. Some argued that the Secretary would exceed the authority of the HEA if the proposed revisions were retained in final regulations. Some commenters argued that some of the issues addressed in this section were subject to review by accrediting agencies or SPREs and inclusion in these standards would result in duplication of effort on the part of the Triad agencies and institutions. Some commenters believed the proposed standards to be needlessly detailed and complex. Some commenters stated that the proposed standards were too broad. Some commenters strongly opposed the clarification that institutions would be expected to comply with all the standards in order to be fully certified. Some commenters noted that there was no effort to weigh the relative importance of the various proposed elements of administrative capability and recommended that the section be revised to prioritize the various standards. Some commenters recommend that the elements of administrative capability in § 668.16 be considered indicators, not absolutes. Some commenters requested that the Secretary provide more specificity in the regulations so that institutions would know precisely what was requested of them and when.

Discussion: The Secretary appreciates the many thoughtful comments on the various aspects of regulating in the area of administrative capability. The Secretary found many of the constructive recommendations made by commenters to be useful in modifying some standards, crafting more precise language for other standards, and understanding why some proposed standards are unnecessary or should not be imposed at this time.

Based on the comments, the Secretary has modified the proposed administrative standards significantly. While specific changes are discussed in detail in connection with the applicable section, the Secretary believes it may be useful to note some of the principles and rationale which guided the refinement of the administrative standards. The Secretary made many changes in sections where commenters pointed out that the same goal could be reached by requiring less detail or action by those institutions that demonstrated a history of compliance with regulations governing the Title IV, HEA programs and imposing more on requirements or restrictions on institutions that have either no track record or have a record of problems administering the Title IV, HEA programs. The Secretary also made adjustments in those proposed standards where there was overlap with the responsibilities of accrediting agencies or SPREs.

The Secretary did not find persuasive the comments of those who urged that the elements be considered as indicators of administrative capability instead of absolutes, or that the standards be prioritized to indicate relative importance. Requiring that institutions meet each and every standard is critical to successful enforcement by the Secretary. If institutions were not required to do so, institutions could argue that they had substantially complied with the administrative capability standards and it would be difficult for the Department to enforce compliance. The Secretary has determined that only way to become a more effective gatekeeper is to select critical standards, put institutions on notice that they are responsible for adhering to them—by requiring that each standard of administrative capability be met—and taking action when they are not.

Changes: None.

Comments: The majority of commenters believed the Secretary should clarify that an institution must administer the Title IV, HEA programs in accordance with *all* statutory provisions, regulatory provisions, or applicable special arrangement, agreement or limitation. Two commenters believed the paragraph to be overly broad and unnecessary.

Discussion: The Secretary appreciates the support of those commenters who understand the importance of making it clear that an institution is expected to comply with all applicable statutes, regulations, and any special agreement or arrangement into which the institution has entered with the Secretary. The Secretary agrees to clarify that special agreements, limitations, or arrangements are those entered into under statutes applicable to Title IV of the HEA.

Changes: Section 668.16(a) is amended to clarify that an institution must administer the Title IV, HEA programs in accordance with all statutory provisions, regulatory provisions, or applicable special arrangements, agreements or limitations entered into under the authority of statutes applicable to Title IV of the HEA. A conforming change has been made to § 668.14(b)(1).

Comments: Many commenters supported the idea that the Department recognize quality training provided by State, regional, or national financial aid administrators or guaranty agencies as a factor in the determination of a designated individual's ability to administer the Title IV, HEA programs at an institution. One commenter noted that while attendance at training

workshops may be beneficial, the workshops have no means of assessing whether attendees have achieved a given level of knowledge. While a few commenters acknowledged that the caliber of training varies and suggested a system that recognizes a variety of training options, no one responded to the Secretary's request for criteria to consider in approving non-Federal training.

A majority of the commenters recommended that to be deemed a "capable individual" an aid administrator should be required to satisfy a training or certification requirement. Many commenters noted that a continuing education requirement might be appropriate, also. Some of the commenters who advocated a continuing education requirement recommended that such training be required to be reported to the Secretary or be attested to by the institution's auditor.

Of those commenters who advocated a certification requirement, most opposed national certification because they felt it would be costly and might duplicate State certification efforts. However, two commenters did advocate national certification or credentials. A few commenters opposed certification and noted that one State had discarded certification several years ago; one commenter noted that the Secretary has not shown any evidence that State-certified training leads to or correlates with improved administration of the Title IV, HEA programs. One commenter who recommended that experience, training, or certification be required specified that the requirement should apply to "at least" the individual operationally in charge of the financial aid office.

Several commenters provided additional suggestions for factors to use in determining whether an individual is capable: An individual's record of timeliness and accuracy in administration of Title IV, HEA programs; an individual's years of experience administering Title IV, HEA programs; an individual's on-going attendance at workshops and seminars during each award year; and an individual's record of compliance with Title IV, HEA program regulations.

Discussion: The Secretary appreciates the comments from those individuals and organizations that supported making some kind of training, certification, or continuing education a requirement. The Secretary continues to believe that State certification, as well as participation in and completion of quality workshops and training programs, are good indicators of a "capable individual" and intends to consider these factors in evaluating capability. However, the Secretary does not see the need at this time to make training or certification a requirement.

Despite the lack of response to the solicitation of suggestions on training elements the Secretary might use to evaluate and approve nondepartmental training, the Secretary believes that quality training programs exist outside the Department that would be beneficial in determining an individual's capability and will continue to solicit advice as to how such programs might be identified and approved. To encourage suggestions on appropriate approval of training programs and to facilitate the use of any training programs approved in the future to evaluate capability, the Secretary retains, without change, the provision in the final regulations that would accommodate training approved by the Secretary.

The Secretary agrees that previous experience and documented success in properly administering Title IV, HEA programs are germane to the evaluation of an individual's capability.

Changes: Previous experience and documented success in properly administering Title IV, HEA programs are added to the list of factors in § 668.16(b)(1) that the Secretary may consider in determining whether an individual is capable.

Comments: The vast majority of commenters opposed strongly the use of any prescriptive staffing standards to evaluate the adequacy of staffing levels at institutions. Many commenters were concerned that there are too many variables—number and type of professional programs offered by an institution, level of staff experience, degree of centralized processing, use of third-party servicers, and diversity of the student body, in addition to the factors listed in § 668.16(b)(2)—to permit an accurate assessment of the adequacy of staff levels. A number of commenters expressed the concern that small institutions would be penalized if staff levels were stipulated in regulations. Many commenters stated that adequate staffing should not be an issue unless an institution demonstrates problems administering the Title IV, HEA programs, as reflected in audits, program reviews, or student complaints. One commenter noted that during the negotiated rulemaking sessions, non-Federal negotiators explained and stressed the potential negative impact on current aid office staffing levels that could result from creating an artificial ratio of aid applicants or recipients to financial aid administrators.

A few commenters provided suggestions on how to evaluate the adequacy of staffing levels at institutions or recommended that the Secretary analyze workload issues and develop appropriate formulae. Other commenters recommended to the Secretary a recent staffing survey conducted for the National Association of Student Financial Aid Administrators (NASFAA) as an appropriate model to use in developing more precise measures of staff adequacy. A few commenters believed that currently participating institutions should be judged on the basis of their track record, but thought that use of ratios of aid applicants or recipients to financial aid administrators might be helpful in the assessment of the administrative capability of institutions applying for participation in the Title IV, HEA programs for the first time.

Discussion: The Secretary believes that, in general, a currently participating institution's compliance with the other standards of administrative capability can serve as a reliable indicator that a financial aid office is staffed adequately. However, if an institution adds a branch campus or other location, starts using or stops using a third-party servicer, or makes other changes that would have an impact on the administrative capability of the institution, the Secretary believes it may be necessary to look more closely at the institution's staffing pattern. Further, an institution that undergoes a change of ownership that results in a change of control may experience a change in its enrollment level and financial aid office personnel and should be subject to review of its staffing level.

In general, the Secretary intends to use the list of factors in this section especially to assess the adequacy of staffing at institutions that make these changes, at institutions that are applying for initial participation, and at institutions with documented compliance violations. However, the Secretary expects all institutions to be able to demonstrate that they have an adequate number of qualified persons to administer the Title IV, HEA programs properly.

In addition to those factors identified in the proposed regulations, the Secretary agrees with those commenters that the use of third-party servicers could have a significant impact on the institution's ability to administer the Title IV, HEA programs.

Given the lack of information available currently about establishing meaningful ratios of staff to student applicants or recipients, the Secretary is not adding a ratio to the factors used to

evaluate even new institutions at this time.

Changes: The Secretary has amended § 668.16(b)(2) by adding the use of third-party servicers to the list of factors to be considered in assessing adequacy of staff levels.

Comments: A few commenters argued that requiring communication of information from any institutional office that receives information that has a bearing on student eligibility for Title IV, HEA program assistance to the person designated to be responsible for administering Title IV, HEA programs was very labor intensive and should be removed. One commenter stated that the specifications for interoffice communications bear no relationship to an expected outcome.

Discussion: The Secretary notes that this requirement has existed for some time. The Secretary continues to believe that it is an appropriate administrative standard inasmuch as proper communication among offices is essential to ensuring that students are eligible for the amounts of Title IV, HEA program assistance they receive and that the status of borrowers is updated, when appropriate.

Changes: None.

Comments: A dozen commenters objected to the proposed requirement that institutions have written procedures or information regarding several key aspects of the administration of the Title IV, HEA programs. Most of these commenters stated that the proposed requirement was burdensome and would create a lot of paperwork with no discernible benefit. One commenter noted that communications processes and structures are dynamic by nature and thus subject to frequent changes. Another commenter expressed concern that the Secretary was trying to dictate the pattern and frequency of communications among college offices. This commenter added that while development of written procedures such as those proposed would be good management practice, the Secretary should not regulate such practices. Some of the commenters recommended that this proposed requirement be removed entirely. Other commenters recommended that the requirement be imposed only on institutions that did not have a record of administering the Title IV, HEA programs successfully or only on larger institutions.

Several commenters suggested that institutions be able to show compliance through their computer systems. One commenter, concerned that the time required to provide detailed documentation would take valuable time away from the smoothly running delivery of aid, recommended that general delineation of responsibilities be considered sufficient. Another commenter recommended that institutions be permitted to work out the method and frequency of communication. One commenter asked that the Secretary clarify how this provision relates to multi-campus institutions if the proposal were retained in final regulations.

Discussion: The Secretary is not persuaded that mandating written procedures or information covering certain aspects of Title IV, HEA administration is an inappropriate or unnecessary administrative standard. However, the Secretary appreciates the concern of commenters who perceived certain areas of the proposal to be unduly burdensome. The Secretary agrees that the burden to an institution of having to prepare written procedures for or written information indicating the nature and frequency of communication of pertinent information among all the offices that have an impact on the administration of the Title IV, HEA programs outweighs the benefit that this provision would provide to the Secretary. The Secretary also agrees that, unless compliance problems relevant to the listed responsibilities are identified, institutions may satisfy the requirement that an institution have written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary by a general written description of the responsibilities of the various offices.

Changes: The requirement that an institution has to prepare written procedures for or written information indicating the nature and frequency of communication of pertinent information among all the offices that have an impact on the administration of the Title IV, HEA programs has been removed from these regulations.

Comments: A number of commenters discussed the issue of appropriate separation of awarding and disbursing functions. Many of these commenters said the prohibition on having family members perform the two functions would be onerous, particularly in a small, family-run institution. In a similar vein, some commenters noted that in a small institution the owner works and has responsibility over all facets of the institution. At small institutions, it is very difficult to provide for organizational independence. Many commenters suggested deleting the new language that references family members and individuals that have control over both functions and relying on the annual audit process to test for adequate internal controls.

Discussion: This standard was strengthened to provide additional deterrence to collusion, which is a big problem at institutions that engage in fraud and at many institutions that fail to make refunds. The strengthened language also gives the Secretary added, needed authority to terminate institutions that engage in collusion.

While the Secretary understands the concern of small family-run institutions that arranging for someone outside the family to perform one or both tasks will be burdensome, the suggestion that the Secretary delete the new language and rely on the required financial and compliance audit is not realistic. At very small institutions, the auditor would probably conclude that there are no internal controls because there are only two or three employees—often the owners.

Changes: None.

Comments: The Secretary received in excess of sixty comments on the provisions that address satisfactory academic progress. The vast majority of commenters were opposed to the proposed addition of § 668.16(e)(3)(ii)(B), which stipulates that undergraduate students would be expected to complete their educational programs within 150% of the published length of the programs as a standard for measuring a student's satisfactory academic progress. They recommended that the proposed new provision be removed. A few commenters argued that implementation of the provision would be an infringement of the academic freedom of institutions. Many others asserted that requiring this level of detail in an institution's satisfactory academic progress standards is unwarranted, because it interferes with institutions' academic procedures, and argued that the proposed new requirement bears no discernible relationship to administrative capability standards. A few commenters opposed the inclusion of any satisfactory academic progress requirements in the standards for determining administrative capability.

Many commenters were opposed to the proposed new criterion governing the maximum time frame because they believed that it does not take into consideration the academic career patterns of nontraditional students who work and have varying hours, attend part-time, or need remedial academic help, often interspersing developmental

courses with courses taken for credit. One commenter contended that this provision would discriminate against students who change majors or eligible programs. Some commenters argued that implementation of the proposed provision would result in the cut-off of Title IV, HEA program funds to students in these categories even though the students may be serious and highly motivated. Thus, students who would otherwise be able to complete an eligible program would be denied that opportunity because they could continue with their education only if they received Title IV, HEA program assistance.

Two commenters recommended that students be permitted to appeal this provision on a case-by-case basis. One commenter concurred with the provision as written and stated the standard is part of the current policy of the commenter's institution. One commenter stated that the required increments of time for the establishment of a maximum time frame in which the student must complete his or her educational program do not work for a program such as court reporting, where the time it takes students to complete a given amount of work may vary from 3 to 12 months.

Discussion: Because students are required by Title IV of the HEA to maintain satisfactory progress to receive Title IV, HEA program assistance, it is only logical that an institution's ability to administer Title IV, HEA programs must be judged, in part, on the existence and implementation of an adequate satisfactory progress policy. The proposed addition is a codification of longstanding policy and is consistent with the requirements of the Student-Right-to-Know Act.

As stated in the February 28, 1994 NPRM, the establishment of a maximum time frame would take into account a student's enrollment status. Institutions are currently required to monitor enrollment status of students receiving Title IV, HEA program funds and 150% of published program length can and should be viewed only in the context of an individual student's enrollment status. Thus, if a nontraditional student who is enrolled in a baccalaureate program that a full-time student is expected to complete in four years and a half-time student is expected to complete in eight years, vacillates between full-time and half-time enrollment, that student would have a computed maximum enrollment period somewhere between six and 12 years. Further, because the requirement is designed to set an upper limit on the period of time for which a student may receive Title IV, HEA program assistance, periods of nonenrollment, during which the student is not receiving Title IV, HEA program funds, would not be counted against the length of time the student is pursuing a degree or certificate. Thus, a student who enrolls and receives Title IV, HEA program funds sporadically would be treated differently from a full-time student who pursues a degree or certificate without interruption.

Paragraph (e)(1)(vii) of this section requires an institution to have procedures under which a student may appeal a determination that the student is not making satisfactory progress. With regard to eligible programs of an academic year or less, these regulations make even clearer the longstanding requirement that the maximum time frame must be divided into increments. Satisfactory academic progress policies are expected to measure whether students are progressing satisfactorily toward their educational goals and should serve also as a device for counseling students about their need to improve their progress, if applicable. If maximum time frames are not divided into increments, these policies are not serving their purpose. This principle applies to programs shorter than an academic year no less than to longer programs.

Changes: Section 668.16(e)(3)(B) is amended to clarify that a maximum time frame in which a student must complete his or her educational program must be no longer than 150 percent of the published length of the educational program for full-time students.

Comments: Two commenters recommended expanding the requirement that an institution must develop and apply an adequate system to identify and resolve discrepancies in the information that the institution receives to include documentation of a student's social security number. They reasoned that resolution of social security number discrepancies is an important part of controlling fraud and abuse in the Title IV, HEA programs and the ability of an institution to obtain appropriate documentation to resolve such discrepancies should be considered in determining administrative capability.

Discussion: The Secretary concurs with the commenters that resolution of social security number discrepancies is essential and should be expressly stated in this section.

Changes: Section 668.16(f)(3) is amended to include documentation of a student's social security number in the information normally available to an institution and for which the institution must have a system to identify and resolve discrepancies.

Comments: About half the commenters expressed concern, to varying degrees, that the proposed reporting requirement is too vague and broad and would result in overreporting that would overwhelm the Office of Inspector General. Some of these commenters recommended that the word "evidence" replace "information." Other commenters suggested that there be some kind of internal review or discussion. Several commenters recommended that institutions continue to make referrals to local law enforcement officials or at least consult with them. Two commenters wanted assurance that the institution would be protected in the event that it made a referral.

Discussion: The Secretary cannot accept the substitution of "evidence" for "information" because that the word "evidence" has legal ramifications. Evidence is normally determined in a court of law when the judge determines what permissible evidence is. Institutions may contact the Office of Investigations within the Office of Inspector General for advice before making a formal referral. The Secretary also cannot accept the suggestion that institutions establish an internal review mechanism prior to referral as such a mechanism may work to block appropriate referrals. However, the Secretary believes that an institution should only be required to refer to the Office of the Inspector General of the Department of Education *credible* information indicating fraud and abuse.

The Secretary sees no problem with institutions making concurrent referrals to local law enforcement authorities, but cannot support the referral to local authorities as an alternative to making referrals to the Office of Inspector General. Concurrent referrals can be made with the regulation as written; no change is necessary. The Secretary cannot guaranty protection to institutions or individuals that make referrals.

Changes: Section 668.16(g) has been amended to clarify that an institution must only refer to the Office of the Inspector General of the Department of Education *credible* information indicating fraud and abuse.

Comments: Almost two-thirds of the commenters supported the concept of requiring institutions that serve significant numbers of students with special needs to have and implement plans for providing students with information about how to meet their needs, but half of these commenters recommended that the requirement be

imposed only on institutions with high withdrawal rates. Two commenters recommended that institutions be required actually to provide the necessary support services.

Several commenters suggested that students with language barriers be considered to have special needs. One commenter suggested that students from low socio-economic background, as determined by using the Expected Family Contribution (EFC) figures under the Federal Need Analysis formula, be determined to have special needs. Those commenters who responded to the Secretary's request for how to define significant number suggested either that 66 percent of total enrollment be used, as that would be consistent with the mitigating circumstances threshold for appealing determinations of excessive cohort default rates, or that percentages of enrollment, for example five percent, 10 percent, or 20 percent, be used as thresholds, depending on the number of students.

Of the commenters who opposed the proposed requirement, almost half argued that there is no connection between the proposed regulation and administrative capability and the Secretary therefore should not regulate in this area. A half dozen commenters believed that students were aware of their own special needs and it was their responsibility to ensure that these needs were met. Several other commenters believed the proposed requirement was unnecessary because either institutions that had students with special needs were already attending to those needs, or such students would already be getting help from appropriate social service agencies. One commenter who objected strongly to the proposal noted, among other concerns, that students need to learn to become self reliant and that employers with whom the commenter's institution deal say the institution is already coddling its students too much.

Discussion: The Secretary is persuaded that regulation in this area is unnecessary at this time.

Changes: The provision that provides that an institution that serves significant numbers of students with special needs must have and implement plans for providing students with information about how to meet their needs has been removed from these regulations.

Comments: Two commenters supported the provision that would require institutions to have procedures for receiving, investigating, and resolving student complaints but requested that the Secretary clarify the proposed language. One of these commenters asked that the Secretary make it clear that institutions would be expected to handle only those complaints related to the educational programs and support services offered by the institution. The other commenter thought that institutions should be required to publicize their system for handling complaints and maintain a log of student complaints.

Discussion: The Secretary appreciates the commenters' support; it is good administrative practice to have a mechanism to resolve student complaints. However, the Secretary has decided the proposed requirement is not an essential administrative standard as there will be other means of addressing student complaints about an institution. Each SPRE will be setting up a student complaint system to process student complaints about the postsecondary institutions in its State. Further, SPREs will be reviewing the handling of student complaints at institutions they review. Accrediting agencies will also be required to assess student complaints about institutions they consider.

Changes: Proposed § 668.16(j) has been removed from these final regulations.

Comments: The Secretary received many comments on the proposals aimed at institutions with educational programs with the stated objective of preparing a student for gainful employment in a recognized occupation. Many of the commenters opposed the proposed requirements that the institution: (1) demonstrate a reasonable relationship between the length of the program and occupational entry level requirements and (2) establish the need for the training. The commenters believe the responsibility for evaluation of program length and the need for training rests with the other members of the Triad, principally the accrediting agencies. Some of these commenters argued that if the Secretary were to regulate in this area, the Secretary would exceed his statutory authority and be intervening inappropriately in academic affairs. Other commenters asserted that need for or length of training programs has nothing to do with ability of institutions to administer Title IV, HEA programs. These commenters recommended the elimination of this proposed standard.

While some commenters were concerned that the standard, as proposed, is unreasonably vague, other commenters charged that the Secretary would be micromanaging if it were implemented. A number of these commenters noted that, for several reasons, it would be difficult to determine whether program length really is appropriate. Many commenters noted that their students are prepared and hired for positions that are above entry level.

Many commenters saw the proposed standard as harmful or unworkable because of the use of minimum State standards as a measure of appropriate length. One commenter noted that there is no provision for evaluation of the method by which a State determines the minimum hours. Another commenter said State-mandated hours are too low Other commenters questioned what would happen if the State sets an inappropriate length. One commenter represented an institution that trains students from many States, each with different minimum requirements, and argued that it would be entirely inappropriate to limit the length of that institution's programs based on the minimum standard of the State in which the institution is located. Many commenters believed that the proposed regulation is unnecessary. One commenter suggested that disclosures to prospective students are mandated under the Student Right-to-Know Act and that SPRE standards will be addressing the abuses of the type described in the preamble to the February 28, 1994 NPRM and this provision would thus be duplicative.

Discussion: The Secretary proposed this provision to curb existing abuses in these areas. The Secretary questions the motives of any institution that claims it is necessary to greatly exceed the minimum number of clock hours required by the State in which the institution is located for adequate training for a particular occupation. The Secretary is also concerned with any institution that provides training for occupations for which no training is necessary, or for which on-the-job training is adequate. Although an institution's SPRE and accrediting agency may regulate in these general areas, the Secretary believes it is necessary to *specifically* target areas of past abuse. Further, the Secretary believes it is consistent to require an institution to demonstrate a reasonable relationship between the length of the program and occupational entry level requirements established by any Federal agency. See the discussion in the *Analysis of Comments and Changes* section that addresses the definition of an eligible program (§ 668.8).

However, the Secretary was persuaded by the commenters who asserted that need for or length of training programs is not directly linked to the ability of institutions to administer the Title IV, HEA programs. The Secretary believes that this provision is more appropriate as a

requirement for participation in the Title IV, HEA programs under an institution's program participation agreement.

Changes: This provision has been moved to § 668.14(b)(26). Further, the requirements of this provision have been amended to require an institution to demonstrate a reasonable relationship between the length of the program and occupational entry level requirements established by any Federal agency.

Comments: Almost half the commenters supported the proposals for requiring that information on job availability and the relevance of courses to any specific State licensing standards be made available to students. All of these commenters suggested new ideas to clarify and expand the proposed requirements. Most of the other commenters asserted that the proposed requirements did not pertain to the proper administration of the Title IV, HEA programs and noted that accrediting agency and SPRE standards will address these areas. These commenters recommended that these proposed requirements be removed.

Discussion: The Secretary continues to believe that providing adequate and accurate information to students and prospective students, so they can make informed decisions, is a function of proper administration of the Title IV, HEA programs. However, this requirement is covered in the section on the Program Participation Agreement, § 668.14, and therefore is being removed from the administrative capability standards section.

Changes: Proposed paragraph 668.16(l) is removed from these final regulations.

Comments: Some commenters stated that the proposed requirement on advertising and recruitment practices was an extremely important one and recommended that it be strengthened by adding reference to oral as well as written statements. The majority of commenters asserted that the proposed requirements did not pertain to the proper administration of the Title IV, HEA programs and noted that accrediting agency and SPRE standards will address these areas. These commenters recommended that these proposed requirements be removed.

Discussion: While the Secretary continues to believe that advertising, promotion and recruitment practices that reflect the content and objectives of educational programs accurately is a critical aspect of the proper administration of the Title IV, HEA programs, the Secretary also recognizes that accrediting agencies and SPREs will address these practices and agrees with those commenters that recommended that these proposed requirements not be included in the final regulations.

Changes: Proposed paragraph 668.16(m) is removed from these final regulations.

Comments: One commenter suggested that there might be a timing problem for an institution that is in the process of responding to an audit report in which liabilities have been identified. The commenter recommended that the Secretary expand the proposed language that would require that an institution have no outstanding liabilities, unless it has made satisfactory arrangements to repay them, to allow for liabilities the institution is currently in the process of making provisions to repay. Another commenter stated that this provision duplicates the financial responsibility requirements proposed in § 668.15(b) (3) and (4) and recommended that it be removed from the administrative capability requirements.

Discussion: The one commenter apparently believes that liabilities are established at the time an audit report is issued. Contrary to the commenter's perception, institutions are provided with the opportunity to respond to an issued audit report before liabilities are established. However, once the audit report and institutional response have been reviewed and a final program determination letter establishing liabilities has been issued, an institution must either repay the liabilities or make satisfactory arrangements to repay. Responding to audit reports, making any necessary corrections to institutional procedures, and making satisfactory arrangements for the repayment of any liabilities established are all fundamental responsibilities of participating institutions. However, the Secretary agrees that these responsibilities are adequately enumerated in the general standards of financial responsibility in § 668.15(b).

Changes: Proposed § 668.16(o) is removed from these regulations.

Comments: The majority of commenters asserted that the proposed requirement that an institution show no evidence of significant problems identified in reviews of the institution was overly broad and imprecise, giving the Secretary unlimited authority to deny certification because of evidence of problems in a wide variety of areas. They recommended that the proposed regulation be rewritten to limit the scope. Many of these commenters were concerned that institutions would be penalized even if there were a problem unrelated to Title IV, HEA programs matters. One example given was that of a university hospital that was found in violation of Medicare reimbursement rules. Some commenters were concerned that the Secretary would deny certification based on an audit finding or other citation that had not yet been reviewed and upheld in a final audit determination or similar action. They urged that only serious findings upheld in final audit or program review determinations or legal proceedings be considered.

Many commenters expressed concern that the Secretary would deny certification to an institution on the basis of a SPRE review, even if the SPRE itself thought the institution should still receive student aid. Two commenters argued that the regulation, as proposed, would affect the institutions involved in the Department of Justice investigation of the Overlap Group, though they have signed a consent decree. One commenter recommended that the provision be removed.

Discussion: The proposed regulation was intended to allow the Secretary to consider evidence of problems in administering Title IV, HEA programs, as documented not only in reports and determinations issued by the Secretary but by other agencies, identified in proposed § 668.16(p)(1), in determining of administrative capability. The Secretary understands the commenters' concern that this was not clearly stated in the proposed regulation and agrees to clarify that the Secretary intends to take into account evidence of significant problems that have a bearing on the administration of the Title IV, HEA programs.

As stated in the February 28, 1994 NPRM, the Secretary plans to use problems identified in final reports and determinations in evaluating an institution's administrative capability. However, the Secretary cannot accede to commenters' urging that only findings for which institutions have exhausted all appeal procedures be considered. If, for example, the Office of Inspector General, a guarantee agency, and an institution's accrediting agency all issued final reports identifying major Title IV, HEA compliance problems, including failure to make appropriate refunds, and a $1 million liability, it would be unconscionable for the Secretary to fully certify the institution because the institution had not had time to exhaust the appeal opportunities of the various oversight agencies.

Changes: Section 668.16(j) has been amended to specify that the significant problems identified must relate to problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program.

Comments: Some commenters supported the proposed requirement that an institution comply with any standards established by the State in which the institution is located or, if no such standards exist, standards developed by the Secretary regarding completion rates, placements rates and pass rates on required State examinations. Many other commenters requested that the Secretary either clarify in final regulations that institutions would be expected to comply with SPRE standards or explain what other State standards should be adhered to. Most of these commenters also asked the Secretary to clarify what Federal standards institutions would be expected to comply with if there were no State standards.

The majority of commenters were opposed to the proposed regulation and recommended that it be removed from the final regulations. Most of these commenters argued that assessment of completion, placement, and licensure pass rates is within the purview of accrediting agencies and States. Some of these commenters stated that review of such rates, as proposed, has no bearing on the capability of an institution to administer Title IV, HEA programs. Many commenters asserted that if the Secretary were to promulgate this regulation, the Secretary would violate the Department of Education Organization Act as implementation of the regulation would involve the Secretary in assessing the effectiveness of an institution's academic programs.

Discussion: The Secretary notes that in commenting on other sections, such as proposed § 668.16(s), which deals with default rates, commenters urged the Secretary to pay more attention to results indicators, such as completion rates, placement rates, and the pass rate on State licensure examinations, and give relatively less credence to input indicators. Further, both the HEA and the Student Right-to-Know Act prescribe the development and use of completion and placement rates under certain circumstances. Nevertheless, the Secretary believes that at this juncture, it is important for the SPREs to develop standards in these areas without reference to the establishment of standards by the Secretary.

Changes: Proposed § 668.16(r) has been removed from these final regulations.

Comments: Many commenters argued that the proposal to use a one-year Federal Stafford Loan and Federal SLS programs default rate of 20 percent as a criterion of administrative capability went beyond the statute and Congressional intent. Other commenters asserted that use of a single year's default rate would be unfair to institutions with small numbers of students, and institutions with graduates who default in unusually high numbers in any given year, and recommended use of two or three consecutive year figures to obtain a more accurate picture of an institution's loan program experience. Another group of commenters was concerned that use of 20 percent, rather than 25 percent, as a criterion was inconsistent not only with the statute, but at variance with other provisions for addressing defaults under the Federal Stafford Loan and Federal SLS programs. Of those individuals and organizations that expressed concern with the use of a one-year, 20 percent figure, many recommended using 25 percent and three years of default rate data instead.

A large number of commenters stated that an institution's default rates are not indicative of an institution's administrative capability. A majority of these commenters expressed their belief that default rates are more reflective of the characteristics of the student body served by the institution than of the institution's administrative capability and recommended that, at the least, the final regulations provide an exemption for institutions that serve a large number of low-income students. Other commenters argued that default rates are influenced by many factors beyond the control of institutions, including: erroneous data, errors in calculating rates, collection practices of lenders, inadequate servicing, regional differences, and borrowers' failure to accept responsibility. Some commenters recommended that the ratio of borrowers to total student enrollment be taken into consideration. A few others expressed concern that there are delays in resolution of challenges to default rates and wanted to have it clear that only final default rates would be used.

A few commenters acknowledged that default rates may be one indication of lack of administrative capability, but argued that many other factors can and do affect administrative capability.

Some suggested that it would be more appropriate for the Secretary to rely on information such as an institution's withdrawal, completion or placement rates and pass rates on external testing and certification, in combination with the default rate, rather than to rely on the default rate alone. Another commenter recommended assessing an institution's default management activities in conjunction with its default rate.

A number of commenters expressed concern that many poor students would be discriminated against if default rates were used as an administrative capability criterion. Some commenters noted the default rate exceptions for tribally controlled community colleges, historically black colleges and universities (HBCUs), and Navajo community colleges and questioned why institutions other than these that serve just as many poor students should be considered poorly operated institutions as a result of a high default rate.

Discussion: The Secretary would like to point out that the use of default rates as a determining factor in the evaluation of an institution's administrative capability is not new. Although some commenters perceived the proposed use of a 20 percent default rate to be at variance with current default practices, it should be noted that the Secretary proposed use of a 20 percent rate because that rate is currently considered as an indicator of impaired administrative capability. Furthermore, institutions with default rates of 20 percent or more are currently required to submit default management plans. However the Secretary also sees merit in using 25 percent as the criterion for addressing defaults under the FFEL programs, as an institution that has a 25 percent rate for three consecutive years is subject to termination from the FFEL programs and it is therefore consistent for the Secretary to thus provisionally certify or otherwise limit such an institution's participation in the Title IV, HEA programs. Acceptance of a three year time period would also address the concern of commenters that a one-year rate may not be an accurate indicator of an institution's administrative capability.

Although the Secretary does not agree with those commenters who assert that default rates are not indicative of administrative capability, as stated in the February 28, 1994 NPRM, the Secretary does agree that approval of an institution to participate, or to continue participation in, Title IV, HEA programs should not rest solely on the institution's having a default rate below 25 percent. Therefore, if the Secretary identifies no other serious administrative capability problems that would warrant denying participation approval to an institution with a default rate of 25 percent or more, the Secretary intends to provisionally certify the institution. As discussed above, the limitations on full certification will include, at minimum, the prohibition on participation in the FFEL programs.

The Secretary acknowledges that tribally controlled colleges, HBCUs, and Navajo community colleges have been

treated differently, but notes that exceptions to default provisions for these institutions were mandated by Congress. The Secretary notes that the exception for these institutions will be extended to apply to this provision.

Changes: The Secretary accepts commenters views that it is more logical to use a 25 percent default rate over a three year period and has amended § 668.16(m) of these final regulations accordingly. The Secretary has amended § 668.17(c)(6) to specify that this standard will not apply to tribally controlled colleges HBCUs, and Navajo community colleges.

Comments: Several commenters contended that the cohort default rate used to determine an institution's administrative capability should be the same for the Federal Perkins Loan Program as it is for the Federal Stafford Loan and Federal SLS programs. Two commenters contended that the cohort default rate should be set at 30 percent for the Federal Perkins Loan Program to be consistent with implementation of the new cohort default rate calculation for the Federal Perkins Loan Program. One commenter suggested that there be a "phase-in" of this requirement to allow institutions the opportunity to meet the lower default rate. Two commenters recommended that the Secretary provide for an appeal procedure for Federal Perkins Loan default rates.

Discussion: Different cohort default rates apply to determining administrative capability with respect to the Federal Perkins Loan Program than apply to the Federal Stafford Loan and Federal SLS programs to conform to different standards for participation in those programs and different sanctions applied for exceeding the rates in those programs.

Changes: None.

Comments: In response to the Secretary's request for comment on the development of an appropriate default rate for the FDSL Program, one commenter contended that the rate should be no lower than the cohort default rate for the Federal Stafford Loan and Federal SLS programs. The commenter believed that if a student does not meet his or her repayment arrangements, the student should be placed in default. A few commenters believed that a student who is using income contingent repayment should not be considered in default and should not be removed from the cohort used to determine an institution's default rate.

Discussion: The Secretary is exploring the use of an appropriate default rate for the FDSL Program through the negotiated rulemaking process. A default rate for the FDSL Program will not be used for the evaluation of an institution's administrative capability at this time.

Changes: None.

Comments: The Secretary received over eighty comments on the use and computation of withdrawal rates in the determination of administrative capability. The majority of commenters had concerns about the calculation of withdrawal rates and the effect of this standard on institutions serving high-risk populations.

The principal concern with the calculation was that a student who merely completed registration procedures but never showed up for classes would be treated as a withdrawal. The commenters believed that this would result in artificially high withdrawal rates. One commenter stated that it is not unusual to have 20 percent of the enrolled students never start classes. These commenters recommended that only students who actually begin classes be counted. Several other commenters urged that the calculation of withdrawal rate take into consideration the institution's refund policy. One of these commenters said that the State of California requires a complete refund of the registration fee up to one week after classes begin, allowing for a "no obligation" look. Another commenter stated that, at another institution, students are allowed a three week "look-see" period during which to make sure the students are satisfied with the training they are receiving and to allow institution personnel to make sure the student is motivated and capable of benefiting from the training.

Many commenters expressed concern that withdrawal rates may be more indicative of the type of students being served rather than of an institution's administrative capability. Some of these commenters asserted that use of a 33 percent withdrawal rate as an absolute standard would result in discrimination against high-risk minority students, reducing opportunities available to them. Commenters also asserted that this standard would adversely affect community colleges that enroll a significantly large number of adult, nontraditional students, many of whom exit and return to the institution several times during their academic careers, or transfer to other institutions. Another commenter noted that institutions located near military bases, where transfers of personnel are routine, could experience high withdrawals of students. One commenter noted that some institutions serve vocational rehabilitation and JTPA students who are impaired to some degree, and as a result, often drop out of the programs in which they were enrolled. Most of these commenters recommended that there be some appeal provision or mitigating circumstances exemption.

One commenter said that in addition to the student population served, withdrawal rates were a function of overall institutional performance and the support services that are provided to students. Two commenters asked how institutions should determine which students will succeed and which will fail.

Some commenters recommended that a rate other than 33 percent be used as an administrative standard. Many commenters noted that the proposed 33 percent rate was a stricter standard than that used by JTPA or any State, but made no mention of what rates States are using. One commenter suggested that if there were any withdrawal rate standard, it should be set at 40 percent, not 33 percent, as that rate would be consistent with JTPA standards. Other commenters said withdrawal rates would be fair only if they were based on national averages, comparing similar programs in like-type institutions or a study of some sort. Yet another commenter said there should be State-established withdrawal rates.

Some commenters argued that withdrawal rates are an academic matter and should not be subject to Federal regulation. Other commenters questioned the basis for the standard. Some stated their belief that an institution's withdrawal rate has nothing to do with the administration of the Title IV, HEA programs. A few commenters said review of withdrawal rates fell within the purview of accrediting agencies; others asserted it was no longer necessary for the Secretary to review withdrawal rates as the SPREs and accrediting agencies will have specific criteria relating to completion and placement rates. Others simply said they could see no basis for using 33 percent as a standard.

Quite a few commenters supported the use of withdrawal rates in assessing administrative capability, albeit as an indicator rather than an absolute. One of the commenters believed the language in current regulations was sufficient to allow the Secretary to make administrative capability determinations. One commenter supported the proposed regulation, as written. Others had no problem with the use of a 33 percent rate as an absolute, provided that students who register, but never show up, are not included in the calculation. One other commenter said the proposed rate was too high.

Discussion: For many years, the administrative capability regulations have provided for the use of withdrawal rates in excess of 33 percent as an indicator of impaired administrative capability. The Secretary notes, therefore, that the use of withdrawal rates as a determining factor in the evaluation of an institution's administrative capability is not new.

The Secretary does not accept the argument of some commenters that withdrawal rates are not an appropriate measure of administrative capability. On the contrary, the Secretary finds that withdrawal rates are a clear measure of administrative capability as they are a function of overall institutional performance and the information and support services that an institution provides to its students and prospective students.

The Secretary expects that an institution that has good admissions procedures and administers the ability-to-benefit provisions properly will have a lower withdrawal rate than one which admits students who cannot benefit from the program either because they lack the academic ability or do not receive adequate support services. An institution that provides proper disclosures, such as the institutional and financial assistance information required to be provided to students and prospective students under subpart D of these regulations, and in the case of an institution that advertises job placement rates as a means of attracting students, data concerning graduation and employment, and applicable State licensing requirements, as required in the program participation agreement in § 668.14(b)(10), will be providing information necessary for prospective students to make informed decisions. The Secretary believes that if prospective students receive adequate and accurate information, they will not drop out of an institution in great numbers. Further, if an institution provides the financial aid counseling required in § 668.16(h), the Secretary expects that students are not likely to withdraw because of a lack of understanding about the financial resources available to them.

In sum, an institution that provides students with comprehensive, accurate information on the institution and its programs, thereby enabling prospective students to make informed decisions about applying to the institution, screens students adequately from the outset to determine that the student can benefit from the program selected, and provides adequate counseling to students who apply for Title IV, HEA program assistance is expected to have a withdrawal rate below 33 percent.

The Secretary notes further that students who withdraw may be eligible for a refund, especially now that more stringent refund policies have been set forth in these regulations at § 668.22. Were an institution to have a high withdrawal rate, it follows that an institution might experience difficulty complying with the refund requirement. By questioning the administrative capability of an institution with a high withdrawal rate, the Secretary can monitor compliance with the refund requirement. The Secretary also believes withdrawal rates are related to default rates in the FFEL and Federal Perkins loan programs in that students who withdraw are more likely to default. By dealing with institutions that have high withdrawal rates, the Secretary hopes to reduce dollars lost due to default in the future.

The Secretary agrees that the withdrawal rate calculation should not include students that complete registration procedures but never begin classes. Similarly, the Secretary agrees that a student who receives a 100 percent refund (less any allowable administrative fee) should not be counted for the purposes of this calculation.

The Secretary agrees with the commenter who wrote that withdrawal rates are a function of overall institutional performance and the support services that are provided to students. The Secretary believes that transfer students, high- risk students, and students who withdraw for other reasons are accounted for by allowing up to 33 percent of the students to withdraw from the institution.

Changes: This provision is amended in § 668.16(l) to provide for use of net enrollment figures, after deduction of students who were entitled to a 100 percent refund.

Comments: Several commenters objected to this proposed requirement that an institution must not otherwise appear to lack the ability to administer the Title IV, HEA programs competently on the grounds that it is redundant and too open-ended. They recommended that it be removed.

Discussion: This paragraph contains language that is in current regulations. Obviously, should the Secretary find it necessary to invoke this paragraph in support of an action, the Secretary would provide the affected institution with detailed information that supports the determination that the institution lacks the ability to administer the Title IV, HEA programs competently.

Changes: None.

Section 668.17 Default Reduction Measures

Default rates. Comments: A number of commenters suggested that any institution with a cohort default rate above 20 percent should be allowed to appeal its cohort default rate because that is the minimum standard for punitive action against an institution.

Discussion: There are varying types of appeals offered to institutions depending on their cohort default rates. An institution which has default rates above the thresholds for participation in the FFEL programs may appeal on the grounds that: (1) The calculation of the rate was erroneous; (2) it satisfies the criteria for exceptional mitigating circumstances; or (3) the calculation included loans which due to improper servicing or collection resulted in an inaccurate or incomplete calculation of the cohort default rate. Institutions with cohort defaults above 20 percent for the most recent year may challenge the calculation of the rate based on allegations of improper loan servicing. In addition, an institution which receives provisional certification based on a default rate above 25 percent over a three year period also can show that it meets the criteria for exceptional mitigating circumstances and should receive full certification under the appropriate regulatory standards. For further information on this provision, see the section of the *Analysis of Comments and Changes* that addresses standards of administrative capability (§ 668.16). Thus, institutions with rates above 20 percent have a significant opportunity to challenge their cohort default rate.

Changes: None.

Default management plan. Comments: Some commenters asked the Secretary to reconsider the requirement that all institutions with cohort default rates greater than 20 percent implement a default management plan that includes the default reduction measures listed in appendix D to the regulations. The commenters asked the Secretary to allow institutions to request approval for alternative plans.

Discussion: The commenters misread the regulations. Section 668.17(b)(1) requires institutions with cohort default rates over 20 percent but less than or equal to 40 percent to submit and implement a default management plan that implements the measures described in appendix D, but allows the institution to submit an alternative plan for the Secretary's consideration. Institutions with cohort default rates above 40 percent must implement the measures listed in appendix D. The

Secretary believes that these latter institutions obviously have failed to otherwise reduce their default rates and that their future efforts need to meet certain standards.

Changes: None.

End of participation. Comments: One commenter asked the Secretary to shorten the guaranty agencies time frame for responding to institutional requests for confirmation of default rate information.

Discussion: The Secretary believes that the regulations must allow the guaranty agencies' sufficient time to check their records in response to questions raised by schools. The Secretary does not agree that it would be appropriate to shorten the time frame.

Changes: None.

Comments: A number of commenters objected to the Secretary's proposal to change the effective date of the institution's loss of participation under § 668.17(c)(3) to the date the institution receives notice of the Secretary's determination that its default rates exceed the statutory levels.

Discussion: Previous regulations allow an institution with excessive cohort default rates to continue to participate until eight calendar days after the institution receives the Secretary's notification. The Secretary has determined that it is inappropriate to allow an institution that has high default rates above the statutory limits eight additional days to entice students to enroll and receive loans under the FFEL programs. An institution which files a timely appeal remains eligible to participate during the appeal process. However, there is no reason to allow an institution that does not appeal additional time to participate in the program.

Changes: None.

Comments: Some commenters asked the Secretary to clarify the status of FFEL programs loan proceeds which are disbursed after the institution learns that it is no longer eligible to participate in the FFEL programs under § 668.17, but before the lenders or guaranty agencies learn of the loss of participation. These commenters also urged the Secretary to provide simultaneous notice of the loss of participation to guaranty agencies, lenders and other agencies.

Discussion: The rules governing the disbursement of funds after an institution's loss of participation are set forth in detail in § 668.26 of the regulations. The Secretary already provides notice of actions against high default rate institutions to guaranty agencies simultaneously with or very soon after notification is sent to the institution. The Secretary will also provide appropriate notification to other interested parties.

Changes: None.

Comments: One commenter suggested that if the Secretary initiates a limitation, suspension or termination action based on an institution's default rate, the Secretary should notify the appropriate SPRE and the institution's accrediting agency.

Discussion: Section 494C(h)(2) of the HEA requires the Secretary to notify a SPRE of any limitation, suspension, termination, emergency action, or other action that the Department takes against an institution. In the regulations governing the designation of nationally recognized accrediting agencies, the Secretary is including a similar provision.

Changes: None.

Appeal procedures. Comments: Some commenters asked how the Secretary planned to implement the amendments to sections 435(a) and 435(m) of the HEA, which allow certain institutions with high cohort default rates to review certain loan servicing records and appeal the calculation of that rate based on allegations of improper loan servicing.

Discussion: As noted by the commenters, sections 435(a)(3) and 435(m)(1)(B) of the HEA were changed by the Technical Amendments of 1993. Under the amended law, institutions that are subject to the loss of eligibility under the FFEL programs under section 435(a)(2)(A) of the HEA, subject to loss of eligibility for the Federal SLS Program under section 428A(a)(2), or whose cohort default rate for the most recent year for which rates have been calculated equals or exceeds 20 percent may include in their appeal of such rate a defense based on allegations of improper loan servicing. The Technical Amendments of 1993 also provide that these institutions will have an opportunity to review certain loan servicing and collection records maintained by the guaranty agencies. The Secretary published a Request for Comments in the **Federal Register** on March 22, 1994 (59 FR 13606) and is reviewing the comments issued in response to that notice. The Secretary intends to issue separate regulations to implement these provisions shortly.

Changes: None.

Comments: Some commenters complained that the time deadlines for cohort default rate appeals are too restrictive and do not provide enough time to prepare an appeal.

Discussion: The Secretary believes that the regulations provide adequate time for an institution to prepare and submit an appeal of the calculation of the cohort default rate. The Secretary notes that Congress has enacted strict time limits on the institution's appeal of its cohort default rates under section 435(a) of the HEA and the Secretary's regulations reflect these requirements.

Changes: None.

Comments: Many commenters argued that the standards for an appeal of the loss of participation in the FFEL programs based on exceptional mitigating circumstances in § 668.17(d) are too tough. The commenters suggested that the completion and placement rate requirements should be reduced or that the standards should consider the population or community served by the institution.

Discussion: The Secretary notes that section 435(a)(2)(ii) of the HEA allows an institution to avoid the loss of participation in the FFEL programs if it shows that exceptional mitigating circumstances exist. The current regulations are tough but are also consistent with this statutory requirement. The HEA clearly establishes a presumption that an institution with excessive cohort default rates above the statutory levels is not serving its students and that its continued participation in the FFEL programs is not in the public interest. It is appropriate that an institution must meet tough standards to overcome this presumption. The Secretary notes that most of the commenters did not provide any basis for changing the standard or adopting other standards. Therefore, the Secretary will not make any changes to those requirements. The Secretary will, however, continue to evaluate the exceptional mitigating circumstances standards in the regulations and determine whether future changes are appropriate.

Changes: None.

Comments: Some commenters asked the Secretary to change the proposal that would limit the evidence institutions could use to show that they serve students with a disadvantaged economic background. The Secretary had proposed to limit institutions to showing that the students' qualified for an expected family contribution of zero.

Discussion: The Secretary has found that an excepted family contribution of zero is an appropriate standard for showing that an institution serves students with a disadvantaged economic background. Therefore, no change will be made.

Changes: None.

Comments: One commenter suggested that institutions which ask guaranty agencies to verify data should be required to list the guaranty date and

type of loan as well as the information required by § 668.17(d)(7). Another commenter suggested that the institution should request the information from the Secretary rather than from the guaranty agencies.

Discussion: The Secretary believes that the guaranty agency will be able to identify the loans in question with the name and social security of the borrowers involved and that it is unnecessary to provide the guaranty date and loan type. The Secretary notes that only Federal Stafford and Federal SLS loans are currently included in the calculation of the cohort default rate. The Secretary also believes that it is appropriate for requests for confirmation of errors to be sent to the guaranty agency rather than the Secretary. The guaranty agencies have the data which the institution is challenging.

Changes: None.

Comments: One commenter argued that the Secretary should have a time deadline for issuing decisions on appeals of cohort default rates filed by institutions and that the institution should win the appeal if the decision is not issued on time. Another commenter suggested that the institution should not be subject to a sanction if a new reduced cohort default rate is issued for the institution during the appeal process.

Discussion: The Secretary is committed to issuing decisions on appeals from institutions within a reasonable time. Many of the changes made to these regulations will contribute to this effort. However, the Secretary does not believe that it is appropriate to allow an institution to avoid responsibility for its default rate because a decision is not issued within a specified time. The Secretary also does not believe that an institution should automatically be able to escape responsibility for its high default rate one year by delaying the completion of its appeal until the next year's lower rate is released.

Changes: None.

Comments: One commenter asked the Secretary to allow institutions to submit cohort default rate appeals by facsimile rather than by mail.

Discussion: The Secretary has found that cohort default rate appeals frequently involve numerous documents involving detailed listings of information. Facsimile transmission may well result in blurred documents. In these circumstances, the Secretary will continue to require appeals to be submitted by mail.

Changes: None.

Definitions. Comments: Some commenters noted that the Secretary proposed to eliminate the provision of the regulations that required that, in calculating the cohort default rates, the Secretary would exclude any loans which, due to improper servicing or collection would result in an inaccurate calculation of the cohort default rate. The commenters objected to this change on the grounds that they believe that this change is contrary to Congressional intent in enacting the new law.

Discussion: The Secretary believes that it is clear that Congress intended to limit the issue of allegations of improper loan servicing in regard to cohort default rates to appeals from the calculation of such rates. The Secretary notes that the Technical Amendments of 1993 changed the language of sections 435(a) and 435(m)(1)(B) of the HEA to limit consideration of improper loan servicing allegations to appeals. Prior to the amendments, the HEA stated that improper servicing would be considered in calculating the cohort default rate. The Technical Amendments of 1993 eliminated this language and added a new subsection 435(a)(3) to specifically allow certain schools with high default rates to appeal those rates based on allegations of improper loan servicing. There is no support for the commenters claim that Congress intended the Secretary to consider allegations of improper loan servicing before rates are calculated and during the appeal process.

Changes: None.

Comments: Some commenters urged the Secretary to require guaranty agencies to allow institutions to review the default rate data prior to submittal of the data to the Secretary and to work with the institutions to ensure correction of the data before the Secretary publishes the list of institutional cohort default rates. Some commenters argued that publication of rates without such a process violated due process.

Discussion: The Secretary notes that a recent decision of the United States District Court for the District of Columbia, *Career College Association* v. *U.S. Department of Education*, C.A. No. 92–1345–LFO (March 22, 1994) rejected the claim that pre-publication review of cohort default rate information was required. However, the Technical Amendments of 1993 amended the HEA to provide institutions an opportunity to review and correct errors in the information provided by the guaranty agency to the Secretary for calculating cohort default rates. This amendment is not effective until October 1, 1994 and the Department intends to issue regulations to provide this opportunity shortly.

Changes: None.

Comments: Some commenters argued that a whole new structure for cohort default rates should be developed. According to these commenters, there are significant errors in the cohort default rate information and the courts have found that the Secretary's calculation of such rates is improper. Some commenters said that the Secretary should make every effort to ensure that default rate information is accurate.

Discussion: The Secretary has taken and will continue to take appropriate actions to ensure that guaranty agencies provide correct information for use in calculating cohort default rates. The Secretary has found that, during the appeal process, institutions have not generally proven significant errors in the calculation of their cohort default rates. Thus, the Secretary rejects the commenters' claim that the cohort default rate information is inaccurate. Moreover, the Secretary does not agree that the courts have reached this conclusion. The commenters are referring to certain preliminary decisions reached by courts relying on the allegations raised by individual schools. The Secretary strongly objects to the suggestion that the cohort default rate information is inaccurate. The Secretary also does not believe that the commenters have shown any facts that support creation of a new appeal structure. However, the Secretary believes that the changes made by the Technical Amendments of 1993 may resolve some of the commenters' concerns.

Changes: None.

Comments: One commenter asked why a loan is still counted as in default for purposes of the cohort default rate if the institution pays off the loan.

Discussion: The Secretary does not believe that an institution should be allowed to buy its way out of the sanctions related to high defaults by its students. The law holds institutions responsible for high default rates and wealthy institutions should not be able to avoid their responsibility for these high rates by paying off loans.

Changes: None.

Comments: One commenter suggested that Federal PLUS loans should be included in the calculation of the cohort default rate.

Discussion: The definition of "cohort default rate" is in section 435(m) of the HEA and includes only Federal Stafford Loans (both subsidized and unsubsidized), Federal SLS loans and Federal Consolidation Loans which are used to repay Federal Stafford and SLS loans.

Changes: None.

Section 668.22 Institutional Refunds and Repayments.

General. Comments: Three commenters believed the specific *pro rata* refund requirements should not be limited solely to first-time students who received Title IV, HEA program assistance.

Discussion: The Secretary does not intend to extend this requirement beyond the scope of the statute; however, an institution would not be prohibited from extending the *pro rata* refund requirements to other students.

Changes: None.

Comments: A few commenters contended that cost substantiation is unduly burdensome. The commenters maintained that costs differ greatly between programs, that indirect expenses such as storage, maintenance, packaging, and shipping would be difficult to justify, and that cost per student would be difficult to calculate if supplies were bought in bulk. The commenters argued that for large schools with many programs, the costs would change too frequently to accurately report and many costs are determined by student choice. The commenters stated that only estimates of costs are possible. These commenters believed that this provision should apply only to institutions with compliance problems. Two commenters contended that the free market will determine what costs are reasonable and this provision is beyond the Secretary's authority. Two commenters believed that this provision should be moved to § 668.44 (student consumer information). Two commenters fully supported the Secretary's proposal, citing firsthand experience with institutions that attempt to circumvent refund policies by inflating supply costs. One commenter recommended that the Secretary limit this provision to the substantiation of only books and supplies that are required and that are institutional charges. One commenter recommended that the provision be limited to requiring institutions to substantiate only the cost of items that the institution supplies, not of those provided by a third-party organization. One commenter asserted that accrediting agencies should monitor these costs.

Discussion: The Secretary believes that cost substantiation is appropriate if the institution wishes to exclude such costs from the refund calculation. As noted by some commenters, the free market has not worked to contain costs charged to students for supplies because the students have little, if any, discretion on the supplies that they are required to purchase for most programs. Furthermore, based upon the Department's experience, some institutions have historically inflated charges for supplies that students were required to purchase. This predatory pricing for supplies has, in turn, inflated costs borne by the Title IV, HEA programs and reduced or eliminated refunds that would otherwise have been owed to the Title IV, HEA programs for students who withdrew. The treatment of supply charges under these regulations will help curb this abuse without significantly changing the supply charges that can be excluded from the refund calculation by institutions that fairly price supplies to their students.

As a result of limiting the required cost substantiation to student charges for supplies sold by the institution or by an affiliated or related entity, the institution is responsible for documenting the costs where a business relationship exists between the seller and the institution. Furthermore, even if an institution purchases supplies in bulk and takes advantage of purchasing discounts that cause the costs for such supplies to fluctuate over time, the Secretary does not believe that it is unduly burdensome to require the institution to document its per-unit cost for the supplies before it may exclude that amount from the refund calculation. Furthermore, the Secretary does not believe it is appropriate for the institution to increase the documented supply costs by allocating any portion of the institution's fixed charges to such calculation. Any such cost recovery for institutional overhead would make the calculation overly complex, difficult to monitor, and more subject to abuse by some institutions. The procedures under the regulations permit the institution to recover the actual cost of such supplies, but are not intended to recapture any additional charges allocable to such items.

The Secretary also believes that the Department is the primary member of the triad that is responsible for monitoring an institution's ability to comply with the requirements for prompt and accurate refund payments. Although an institution's accrediting body or cognizant SPRE will have concerns about certain aspects of an institution's adoption and implementation of its refund policy, HEA has given the Department the primary responsibility for establishing the requirements for the timing, calculation and procedures for paying refunds to the Title IV, HEA programs.

Changes: None.

Comments: Six commenters supported the requirement for fair and equitable refunds, but suggested that to be truly equitable, the requirement should be in force for all students, not just those who receive Title IV, HEA program assistance. Two commenters supported the Secretary's proposal to limit these refund requirements to affect only recipients of Title IV, HEA program assistance. Two commenters suggested refund requirements should differ among students based on the reason for the student's withdrawal. The commenters believed students who officially withdraw for "legitimate" reasons, such as medical leave or a family emergency, deserve the benefit of a liberal refund policy. The commenters believed, however, that students who withdraw without notification or whose reasons for withdrawal are "irresponsible or immature" should be subject to a more stringent, less beneficial refund policy.

Discussion: As discussed in the preamble of the February 28, 1994 NPRM, several negotiators asserted that applying the refund requirements to all students would be too costly for institutions. The Secretary acknowledges that having different refund policies for students who received Title IV, HEA program assistance could be perceived as inequitable. However, no institution is prohibited from adopting these refund requirements for all its students. The Secretary believes Congress clearly intended to treat groups of students in a like manner with regard to refunds, regardless of an individual student's reason for withdrawal. The Secretary believes a refund policy requiring the assessment of a student's valid cause for withdrawal would be difficult to regulate and implement, and would require extensive professional judgment on the part of the institution, thereby excessively increasing the institution's burden.

Changes: None.

Comments: Six commenters stated that the requirement that an institution provide examples of an institution's refund policy to prospective students is burdensome and unnecessary. The commenters asserted that most students would not understand such examples and that the examples would inevitably be misleading because the many variables that might apply to a real student's withdrawal situation would not be represented. Three commenters shared the Secretary's view that prospective and current students should receive a written statement containing an institution's refund policy, but one commenter believed providing such a

statement would be burdensome and costly for institutions.

Discussion: The Secretary believes that current and prospective students have the right to be informed in writing of an institution's refund policies and practices, and that the costs of providing such information are part of the normal costs of doing business. A particular student's ability to completely comprehend such information does not impact that student's right to receive the information. Further, the Secretary would expect that, in accordance with 34 CFR 668.45(a), an institution would have designated an employee or group of employees who must be available on a full-time basis to assist students or prospective students with any questions they might have in this area. The Secretary wishes to clarify that, as discussed in the February 28, 1994 NPRM, the requirement to provide examples would be met if the institution informs students in the written refund policy that examples are available and the institution makes the examples readily available to current and prospective students on request. The Secretary does not believe refund examples must include all possible variables to be useful to students. An institution is expected to provide reasonable examples of common refund situations applicable to its average student population.

Changes: Section 668.22(a)(2) has been amended to clarify that the institution must make available to students, upon request, examples of the application of the refund policy and inform students of the availability of these examples in the written statement.

Fair and equitable refund policy. Comments: Many commenters believed the requirement for a fair and equitable refund, as interpreted in the February 28, 1994 NPRM, is needlessly complex, is intrusive upon the rights of institutions to determine policy, and extends beyond the intent of the law. The commenters believed institutions should not be forced to calculate up to three separate refund amounts for each withdrawing student, as this would be burdensome and confusing both to institution employees and to students, resulting in withdrawing students inevitably receiving incorrect information. The commenters asserted that an institution should be allowed to determine which calculation generally provides the most beneficial refund to its average student body population and use that calculation consistently for Title IV, HEA program refunds. Four commenters believed the Secretary should provide certified refund calculation software for institutional use, rather than unfairly expecting institutions to create or purchase from a private source software that is potentially erroneous. Two commenters requested the Secretary commit to providing clear notice of revisions and changes to the refund requirements, to avoid the inevitable widespread confusion and noncompliance that will otherwise result if the February 28, 1994 NPRM is published as a final rule. One commenter believed it is inappropriate and inefficient to require institutions to implement a policy which affects such a small number of individuals, and that institutions are capable of developing workable refund policies that are fair and reasonable. One commenter supported the Secretary's interpretation of the statute and believed withdrawing students deserve the benefit of the largest refund possible.

Discussion: The Amendments of 1992 define a fair and equitable refund policy as one that provides for at least the largest of the amounts provided under applicable State law, nationally recognized accrediting agency requirements approved by the Secretary, or the *pro rata* refund calculation for qualifying students, as described in the statute. The Secretary asserts that the individual calculation of all possible refunds for each withdrawing student is the only possible means by which an institution can determine which refund calculation provides the largest amount, as required by the statute. The Secretary is exploring the development by the Department of software for institutional use. The Secretary believes the equity to the student provided by the law and the proposed rule override the commenters' concerns of burden and potential confusion, and will continue to provide ample direction and guidance on refunds to institutions in the form of examples, Dear Colleague Letters, and the *Federal Student Financial Aid Handbook*.

Changes: None.

Comments: Four commenters believed the requirements of Appendix A are too cumbersome and should be replaced with a more reasonable policy. Three commenters believed the Appendix A requirements are intrusive and extend beyond the scope of the statute, resulting in excessive burden and cost for institutions. The commenters suggested Appendix A should be a guideline for problem-free institutions, required only of institutions with demonstrated compliance problems. Two commenters suggested all institutions should be required to follow the guidelines of Appendix A, thereby eliminating all the other detailed and stringent refund requirements proposed in the February 28, 1994 NPRM. Four commenters asserted that institutions have already adopted procedures in line with the Appendix A guidance and that further intrusion on the part of the Secretary is unnecessary and unjustifiable. The commenters believed institutions have the ethical means to decide these issues among themselves and should be allowed to do so.

Discussion: The Secretary believes the Amendments of 1992 clearly give every student who receives Title IV, HEA program assistance—not just those students who attend institutions with compliance problems—the right to a fair and equitable refund as defined in the statute. The Secretary is concerned, as discussed in the February 28, 1994 NPRM, with instances wherein an institution's State and accrediting agency do not have specific refund policies and a particular student is not entitled to a *pro rata* refund. In such a case, a loophole exists and the law offers no alternative standard by which to ensure the student receives a fair and equitable refund. Consistent with existing FFEL programs regulations, the Secretary intends to provide Appendix A as an acceptable refund standard in the absence of all other standards.

Changes: None.

Pro rata Refund. Comments: Many commenters believed the 60 percent point in time (for the purposes of the *pro rata* refund requirement), when measured in clock hours, should be calculated using the hours scheduled instead of the proposed use of hours completed by the student. Two commenters specifically referred to the statute's concept of elapsed time, stating that the treatment proposed in the February 28, 1994 NPRM is in conflict with the Secretary's earlier guidance and the intent of the law. All of these commenters believed the costs of providing education are fixed for each day a class is offered, regardless of an individual student's attendance. The commenters further suggested the Secretary is openly discriminating against clock-hour institutions by allowing credit-hour institutions to figure the 60 percent point in time using weeks, while insisting that clock-hour institutions consider individual students' rates of progress. Two commenters suggested the Secretary allow clock-hour institutions to include excused absences and repeated hours in the total hours completed by a student. One commenter noted that the determination of the 60 percent point in time conflicts with the determination of the portion of the enrollment period that remains for the purposes of calculating a refund after an institution has

determined that a *pro rata* refund must be calculated. This commenter believed these two determinations should be simple and consistent with one another.

Discussion: In the case of a program measured in clock hours, the Secretary believes it is most reasonable to use the number of hours completed by the student in determining what percentage of the enrollment period has elapsed. To determine the 60 percent point by using scheduled hours could unjustifiably punish a student whose progress is slower than the average student, and could cause a first-time student whose progress is above average to be entitled to a *pro rata* refund past the point of 60 percent completion. The Secretary acknowledges that this and other provisions of the Title IV, HEA program rules differentiate between institutions based on whether programs are measured in clock or credit hours, and based on whether the institutions use standard terms. The Secretary believes this differentiation is justifiable and necessary, and is due to the Department's extensive efforts to take into account the many variables and circumstances found in the postsecondary educational community. In accordance with past guidance issued by the Department, excused absences may be counted when determining hours completed by the student if the institution has a written excused absence policy allowing for a reasonable number of absences which do not need to be made up to complete the program, and if it is documented that the hours were actually scheduled and missed by the student prior to the student's withdrawal. The Secretary acknowledges that, as discussed in the February 28, 1994 NPRM, the determination of the 60 percent point in time is intentionally different from the determination of the portion of the enrollment period that remains. The Secretary does not believe consistency between these two determinations is necessary or beneficial.

Changes: None.

Comments: Four commenters found the proposed definition of unpaid charges for *pro rata* purposes to be in conflict with the statutory definition. Two commenters believed the statute adequately defines unpaid charges and it is unnecessary for the Secretary to propose a different or expanded definition. One commenter supported the Secretary's proposal to define unpaid charges for *pro rata* purposes as it was defined for general refund purposes in the June 8, 1993 final regulations. One commenter suggested that the treatment of unpaid charges should be the same in all refund situations, instead of the current proposal which differentiates between statutory *pro rata* refund calculations and all other calculations. This commenter believed this discriminates against certain groups of students and thus fails to treat all students equitably.

Discussion: The Secretary does not believe the proposed definition of unpaid charges is in conflict with the more general statutory definition. The Secretary believes it is appropriate to make the definition consistent with the regulatory definition already in place. The treatment of unpaid charges for the purposes of the statutory *pro rata* calculation is prescribed in the Amendments of 1992. The Secretary has in the past sufficiently justified the treatment of unpaid charges for refund calculations other than statutory *pro rata* refund calculations. The commenter has submitted no evidence of discrimination.

Changes: None.

Comments: Three commenters support the Secretary's proposal to avoid double-counting certain charges (i.e., administrative fees) by excluding them from the *pro rata* refund calculation instead of subtracting them. Three commenters disagreed with the required proration of all educational costs, given that some costs incurred by the institution are fixed (i.e., teacher salaries, dormitory charges, and physical plant costs) and do not decrease when a student withdraws. The commenters asserted that institutions required to issue *pro rata* refunds will lose money, and that the students who remain will experience cost increases as a result. Four commenters believed an application fee should not be subtracted from a *pro rata* refund, because it is not really an education cost and because a portion of administrative costs are already recouped through the *pro rata* refund calculation. Two commenters asserted there is no statutory support for the Secretary's proposal that an administrative fee must be a real and documented charge. One commenter suggested the Secretary allow all administrative fees to be subtracted from the *pro rata* refund calculation. Three commenters believed it is intrusive and inappropriate for the Secretary to regulate details such as irregularly expended meal credits, passed-through room charges, and group health insurance fees. The commenters stated that such details should be handled in guidelines, not requirements, and should ultimately be left to the discretion of individual institutions. One commenter suggested that the costs of services voluntarily provided by an institution as a courtesy to its students should be excluded from the *pro rata* refund calculation. Two commenters suggested that the Secretary's proposed treatment of group health insurance costs should be extended to include other insurance, such as the liability and medical malpractice insurance required for medical students or group health insurance that is not required by the institution. One commenter stated that the exclusion allowed for group health insurance fees should be extended to all refund calculations, not just statutory *pro rata* refund calculations.

Discussion: The Secretary agrees that it is more reasonable to completely exclude certain costs from the *pro rata* refund calculation, in effect allowing the institution to fully retain the money paid for those charges, rather than include the costs and assess them at a prorated percentage, only to then completely subtract them from the refund, thereby double-counting them. The Secretary wishes to clarify that the proration of educational costs under the *pro rata* refund calculation is required by the Amendments of 1992 and it is not the purpose or authority of these regulations to rescind that requirement. The Secretary agrees that an application fee is not an educational cost for Title IV, HEA program purposes and that it is therefore not relevant in the calculation of a refund. The Secretary does not believe that Congress intended to allow institutions to retain from a *pro rata* refund amount administrative charges that do not actually exist. The *pro rata* refund calculation determines what portion of institutional charges paid can be retained by the institution; the Secretary believes it is unreasonable to allow the retention of a fee that was not in fact charged or paid. The statutory *pro rata* calculation provides for the maximum amount of administrative costs that may be retained by the institution. The Secretary believes certain costs (i.e., passed-through room charges, and group health insurance fees) warrant treatment other than standard proration and has therefore specifically named such costs and proposed they be excluded from the calculation. The Secretary believes the specific regulation of the treatment of these costs will avoid institutional abuse of these allowances and ensure greater equity in the payment of refunds. After further consideration, the Secretary has found the provision treating irregularly expended meal credits to be unnecessarily complex and not entirely effective in its intended purpose. No commenters offered

support for this provision or any alternative suggestions. This issue will be reexamined in the future and further input from the financial aid community will be sought. The Secretary recognizes that some institutions may elect to provide certain services, such as voluntary group health insurance, as a courtesy to students. The Secretary believes it is necessary to exclude from the *pro rata* refund calculation mandatory charges for group health insurance to prevent students from an unavoidable loss of insurance upon withdrawal. This situation could be avoided if the student had the option of purchasing health insurance from a source other than the institution. The Secretary does not believe the cost of specialized insurance coverage such as medical malpractice coverage warrants the same treatment as group health insurance costs, primarily because such specialized insurance is no longer needed by the student after withdrawal. The statute provides that all refunds other than *pro rata* refunds are to be made in accordance with State or accrediting agency standards. To extend the allowable exclusion for group health insurance fees to all refund calculations would necessitate an amendment to the law.

Changes: Section 668.22(c)(4) has been amended to reflect that certain fees, listed as allowable subtractions in the February 28, 1994 NPRM, are to be excluded entirely from the *pro rata* refund calculation. This section has also been amended to delete from that list of fees the reference to an application fee.

Comments: Several commenters believed the cost of equipment, books and supplies should not be prorated, because possession of an item cannot be "split" between the institution and the student. The commenters believed the proposed treatment of books and supply costs will unjustifiably enable students to keep supplies they had not fully paid for, and will force institutions to either function as "pawn shops" for the return of such items or bear the costs of supplies they do not own. The commenters believed such a policy will force institutions to raise book and supply costs for students who remain or to stop providing supplies altogether, to the obvious detriment of continuing students. Two commenters believed institutions will be forced to instruct students to obtain supplies from independent vendors, resulting in great consumer risks for the student. One commenter suggested that the refund amount for equipment, book, and supply costs should be determined by the manufacturer of the individual products and passed on from the institution to the student accordingly. Several commenters asserted that equipment, books, and supplies become the sole property of the student when issued, and suggested the institution be allowed to withhold delivery and billing of such items until they are needed. The commenters also suggested the Secretary allow institutions to retain the full cost of unreturnable items issued and of returnable items issued that are not returned, and require institutions to refund in full the cost of any issued items that are returned and of any items that were not issued but for which the student was charged. Several commenters stated that the return of certain supplies, books, or equipment is unrealistic and burdensome, regardless of the condition in which it is returned, and that the regulations should therefore not require institutions to accept returned items. One commenter supported the Secretary's proposed treatment of charges for returned equipment.

Discussion: The Amendments of 1992 require all institutions participating in the Title IV, HEA programs to refund unearned tuition, fees, room and board, *and other charges* to a student who received Title IV, HEA program assistance and failed to complete the period of enrollment for which the student was charged. The Secretary does not believe Congress intended to exclude the unearned cost of books, supplies, and equipment from the refund amount. However, the Secretary agrees that institutions should not be expected to refund to the student a portion of the cost of unreturnable items that were actually issued to the student and kept by the student. The Secretary wishes to clarify that the proposed requirements governing books, supplies, and equipment will not force an institution to accept returned merchandise; rather, the proposed provision allows an institution to state that an item is returnable and to then retain in full the cost of that item if it is not returned, provided the institution clearly disclosed in the enrollment agreement any restrictions on the return of equipment, including equipment that is unreturnable and deadlines for returns.

Changes: Section 668.22(c)(5) has been amended to allow an institution to exclude from the *pro rata* refund calculation the documented cost of any unreturnable equipment, books, and supplies issued to the student, if the student was informed in the enrollment agreement that the item is unreturnable and may keep the item, or under what conditions normally returnable equipment is considered to be unreturnable. A corresponding change has been made to appendix A.

Comments: Several commenters asserted that the definition of a first-time student should be limited to a student attending any postsecondary institution for the first time. Three commenters disagreed with the Secretary's proposal to include in the first-time student definition any student who previously enrolled at the institution but received a 100 percent refund of tuition and fees. One commenter asked the Secretary to amend the first-time student definition to include students who previously enrolled only in continuing education courses that do not lead to a degree. One commenter requested the Secretary to issue one consistent definition of a first-time student, instead of expecting institutions to use different definitions for different Department requirements, such as IPEDS, refund calculations, FFEL programs counseling, and student consumerism.

Discussion: The Secretary believes it is the intent of Congress to extend the benefit of a *pro rata* refund calculation to all students attending a particular institution for the first time, not just to those students who are attending any postsecondary institution for the first time. The Secretary also believes that a student who enrolled at an institution but received a full 100 percent refund has not had sufficient educational experience at the institution to be considered anything other than a first-time student. The Secretary does not believe the issue of continuing education coursework poses a serious problem with the definition of a first-time student for the purposes of the *pro rata* refund calculation. The Secretary recognizes that the definition of first-time student is different for certain purposes in the administration of the Title IV, HEA programs, and will explore the possibility of creating a single, consistent definition in the future.

Changes: None.

Comments: Three commenters believed the proposed definition of "the portion of the enrollment period for which the student was charged that remains" is not consistent with the statutory definition of an academic year. The commenters asked the Secretary to include in the proposed definition an explanation of the term "week" and describe the appropriate handling of a student who attends only a portion of a week.

Discussion: The Secretary does not believe consistency with the statutory definition of an academic year is relevant. The Secretary does not believe

further explanation is necessary, and intends to entrust institutions with the responsibility for fairly and consistently handling uncertain situations such as a partial week of attendance.

Changes: None.

Period of Enrollment for Which the Student Has Been Charged. Comments: Several commenters suggested alternatives to the Secretary's definition of "period of enrollment for which the student was charged." Three commenters suggested using only the length of the program, for institutions charging by the program, or the length of the term, for institutions charging by the term. One commenter suggested the Secretary require all institutions to use the academic year as the enrollment period. Another commenter suggested the Secretary require all institutions to use the lesser of a payment period, the program length, or the academic year. Three commenters believed the proposed definition does not address programs longer than an academic year. Several commenters believed the Secretary's proposed definition is unfair to institutions charging by the program, forcing them to use the cost of the entire program in the refund calculation, while only a portion of the financial aid awarded for the entire program can be counted when calculating the unpaid charges. Such a formula results in excessively high unpaid charges, which must be subtracted from the amount the institution could otherwise retain. The commenters believed this treatment is discriminatory against institutions that charge by the program and suggested the Secretary retain the concept of payment periods, both for assessing charges and considering aid disbursed, and limit those payment periods to one-third an academic year (as in a quarterly term system), or one-half an academic year (as in a semester term system). Two commenters believed the determination of the enrollment period for refund purposes should be left to the discretion of the institution. Two commenters asked that clock-hour institutions using standard terms be treated the same as credit-hour institutions using standard terms.

Discussion: The Secretary believes the proposed definition of "period of enrollment for which the student was charged" is adequate and applicable to the needs and circumstances of the various types of institutions participating in the Title IV, HEA programs. The Secretary wishes to clarify that the proposed definition establishes a minimum period of enrollment (to prohibit institutions from creating artificially short periods of enrollment simply for the purposes of reducing a student's unpaid charges or eligibility for a *pro rata* refund calculation) and does not impose a maximum limit to the period of enrollment. The Secretary recognizes that institutions charging by the program may have to pay *pro rata* refunds to a greater number of students than institutions that charge by the term and may consistently find their students have high amounts of unpaid charges under the proposed refund calculation, resulting in a reduction in the amount the institution can retain for non *pro rata* refund calculations. The Secretary would like to point out, however, that such a situation exists precisely because the institution charges the student for the entire cost of the program up-front. It is true the same student could attend an institution which charges by the term and would, under the proposed refund calculation, owe a smaller amount of unpaid charges. The term institution, however, does not contract with the student for any amount in excess of the costs of the term. The adverse affects of the Secretary's proposal, therefore, as claimed by some of the commenters, are the result of an institution's own decision to contract with the student for the costs of the entire program up-front, instead of contracting for the costs of a smaller period of study, such as an academic term; this is an institutional decision over which the Secretary has no control. The Secretary believes the discontinuation of the use of payment periods and the practice of attribution will greatly simplify the refund requirements, and that this benefit overrides the commenters' concerns. The Secretary believes it is necessary to define and limit the definition of enrollment period to ensure equitable refunds to Title IV, HEA program recipients. The Secretary wishes to clarify that, under the proposed definition, all clock hour institutions are treated the same, regardless of whether they use standard terms or not, because it has been the experience of the Secretary that these institutions all charge by the program.

Changes: None.

Repayments to Title IV, HEA Programs of Institutional Refunds and Repayments. Comments: Three commenters believed the treatment of unpaid charges for non*pro rata* refunds, as prescribed in the June 8, 1993 final regulations, should be rescinded in compliance with the statutory treatment for *pro rata* refund purposes. Two commenters believed the requirement penalizes institutions by reducing the amount of institutional charges they can retain. Three commenters asserted that the requirement unfairly leaves students owing large balances to the institution which would otherwise have been paid by Title IV, HEA program assistance, and this result obviously is not fair and equitable under the statute. Three commenters requested the Secretary include late disbursements of State, private, and institutional aid as amounts that can be used to reduce a student's unpaid charges, if these aid sources have published late disbursement policies under which a withdrawing student can be paid. Two commenters suggested the Secretary include late disbursements of unsubsidized Stafford Loan program funds and all Direct Loan program funds as amounts that can be used to reduce a student's unpaid charges. Two commenters believed the consideration of late disbursements when determining unpaid charges is inappropriate and should not be allowed under the refund requirements. One commenter suggested that, because the requirement to subtract unpaid charges from the amount the institution can retain does not apply to statutory *pro rata* refund calculations, the requirement should also not apply to voluntarily *pro rata* refund calculations that are not required by the Amendments of 1992.

Discussion: The public was previously invited to comment on requirement to subtract unpaid charges from the amount the institution can retain in response to the December 23, 1991 NPRM. The comments and responses on this issue, including the decisions and rationale of the Secretary, are included in the June 8, 1993 final regulations which included the requirement. The required treatment of unpaid charges for the purposes of this section, except for the calculation of a *pro rata* refund under the statute, reaffirms the basic principle of student financial aid: the family (or student) makes its contribution first before financial aid is expended. Although some students may have to pay more toward institutional charges than they originally expected, due to the fact that they withdrew and became ineligible for a portion of the aid they expected to receive, this is more equitable to those students who have responsibly fulfilled their financial obligations to the institution. The Secretary does not believe this issue warrants reconsideration in the context of the February 28, 1994 NPRM. The administration of private and institutional student aid funds is not within the control of the Secretary. Therefore, the Secretary cannot guarantee the availability or delivery of these funds and cannot allow

institutions to use late disbursements of these funds to reduce a student's unpaid charges. The Secretary agrees, however, that institutions should be allowed to use late disbursements of State student aid to reduce a student's unpaid charges, provided the State in question has a standard written late disbursement policy which the institution follows in calculating unpaid charges and provided the student is eligible to receive the late disbursement in spite of having withdrawn. The Secretary wishes to clarify that an institution which chooses to count a late disbursement of State student aid in this manner will be liable for that amount if it is not disbursed to the student within 60 days after the student's date of withdrawal, as defined in § 668.22(i)(1), and will be required to recalculate the Title IV, HEA program refund and return any additional amounts required to the appropriate Title IV, HEA program accounts or to the lender within the deadlines specified in § 688.22(g). The Secretary agrees that institutions should be allowed to use allowable late disbursement amounts from unsubsidized Federal Stafford loans and Direct Student loans to reduce a student's unpaid charges. The Secretary does not believe the treatment of unpaid charges for the purpose of statutory *pro rata* refund calculations should be extended to voluntary *pro rata* refund calculations.

Changes: Section 668.22(f)(2)(ii) has been amended to include allowable late disbursements of State student financial assistance, unsubsidized Federal Stafford loans and loans made under the Federal Direct Student Loan Program. A corresponding change has been made to § 668.22(c)(2).

Comments: Many commenters disagreed with the Secretary's proposal to remove the fraction that is currently used to determine what portion of the refund must be returned to the Title IV, HEA programs. These commenters believed this change is grossly unfair and negates the concept of equal partnership between the Federal government, the States, and the institution in providing student financial assistance. Six commenters believed the proposed treatment will cause all parties who contribute to a Title IV, HEA program recipient's educational costs—States, institutions, private sources of aid—to lose their contributed funds to the Title IV, HEA programs in the event of a withdrawal. These commenters believed these other parties will therefore be reluctant to pay any of their funds to recipients of Title IV, HEA program assistance. These commenters asserted that such a policy would unfairly penalize State, institutional, and private sources of aid, and Title IV, HEA program recipients. One commenter reported that State programs are already deciding to avoid the Title IV, HEA program refund calculation by withholding their monies until after the refund period has passed; such a practice will be detrimental to Title IV, HEA program recipients who withdraw and owe large balances that would have been paid by State assistance, had it been disbursed on time. This commenter urged the Secretary to prevent the negative effects of this policy by amending the definition of "financial aid" (for the purposes of calculating the student's unpaid charges) to include State and private assistance that can reasonably be expected to be awarded, even if it has not actually been received at the time of withdrawal. One commenter supported the Secretary's rationale for removing the fraction in relation to refunds, but did not support extending that interpretation to repayments.

Discussion: The Secretary wishes to further clarify that the Amendments of 1992 specify in section 485 that refunds must be returned to the Title IV, HEA programs first. Further, the Technical Amendments of 1993 changed section 485 of the HEA to specify that refunds may be returned to other sources of student assistance only after the refund is returned to the Title IV, HEA program funds in the specified order of allocation. The Secretary has no authority to alter this requirement. The Secretary recognizes that some States, institutions, or private sources of aid may deliberately withhold funds from otherwise eligible students who have received Title IV, HEA program assistance. This is a decision over which the Secretary has no control. The Secretary does not believe the definition of "financial aid" can be amended in the manner suggested by one commenter, as such a change would be difficult to regulate. The Secretary feels it is appropriate, for consistency with the spirit of the law and to reduce administrative burden, to extend the interpretation of the law to repayments as well as refunds.

Changes: None.

Comments: Two commenters support the Secretary's proposal to set a minimum dollar amount below which a refund or repayment does not have to be made. One commenter suggested the Secretary set the same minimum amount for both refunds and repayments.

Discussion: After further consideration, the Secretary believes that this proposed provision is inconsistent with the amendment made to section 490 of the HEA that established criminal penalties for failure to pay refunds, specifically including refunds of less than two hundred dollars. Further, the Secretary believes that by the time the institution has determined the amount of the refund, most of the administrative effort and cost has been expended. The Secretary believes that neither the institution nor the student would benefit from the proposal to allow institutions to forgo making refunds of $25 or less. Also, the Secretary believes that part of the institution's administrative costs are recouped through the administrative fee that is allowed to be excluded from the *pro rata* refund calculation.

Changes: Section 668.22(f)(3)(iii) has been amended to remove the proposed minimum dollar amount below which a refund would not have to be made.

Allocation of Refunds and Overpayments. Comments: Three commenters support the Secretary's proposal to mandate the order of return of FFEL programs refund amounts. One commenter supported the proposed allocation of FFEL programs refunds and believed it will reduce student indebtedness. Three commenters believed including PLUS and unsubsidized Stafford loans in the refund allocation negates the basic principle of financial aid, that the family (or student) makes its contribution first before financial aid is expended. One commenter believed PLUS and unsubsidized Stafford loans should be excluded from the refund allocation, because grant money should not be used to pay back student loans, especially loans that are not need-based.

Discussion: The Secretary wishes to clarify that section 485 of the Amendments of 1992 specifies the order of return of refunds to the various sources of aid and to the student. The statute does not exclude the PLUS or unsubsidized Stafford loan programs from this order of return. For consistency and reduced administrative burden, the Secretary has proposed the same order of return for repayments as is mandated in the law for refunds. The Secretary believes the return order to be logical and appropriate.

Changes: None.

Comments: Three commenters disagreed with the Secretary's assertion in the preamble of the February 28, 1994 NPRM that refunds should not be used to eliminate outstanding balances on loans made for prior years. These commenters believed it is in the best interest of the student to allow a refund to be applied to outstanding loans.

Discussion: The Title IV, HEA programs award financial assistance based on the costs of attendance and the student's need assessment for a specific period of enrollment in a specific award year. The Secretary believes it is inappropriate to use funds awarded for the current enrollment period to cover costs from a prior enrollment period.

Changes: None.

Refund Dates. Comments: Four commenters believed the Secretary should be more flexible in terms of how an institution determines and documents a student's last day of attendance in the case of unofficial withdrawal. These commenters asserted that it is unreasonable to expect all institutions to maintain attendance records. Two commenters suggested institutions be required to determine that a student has unofficially withdrawn within a certain time frame, to avoid a student's unofficial withdrawal going unnoticed for an unreasonably long period of time. One commenter believed the proposed provisions should address cases of institution-initiated retroactive withdrawals.

Discussion: The Secretary wishes to clarify that the concept of using the student's last recorded date of attendance for refund purposes is not "new," but has been included in § 668.22 of the Student Assistance General Provisions regulations since 1988. All institutions participating in the Title IV, HEA programs have long been expected to have in place a system by which student attendance can be documented for the purposes of determining the withdrawal date in cases of unofficial withdrawal. The Secretary agrees that unofficial withdrawals should be determined within a reasonable time frame, in connection with the proposed definition of "withdrawal date." The Secretary believes cases of institution-initiated retroactive withdrawals are uncommon and as such do not warrant regulatory inclusion.

Changes: Section 668.22(i)(1)(ii) has been amended to limit an institution's determination of a student's unofficial withdrawal to no later than 30 days after the expiration of the enrollment period, the academic year, or the program, whichever is earlier.

Comments: One commenter believed the Secretary should not impose a deadline for refunds and repayments. Several commenters simply stated the proposed 30-day deadline would be too difficult to meet, especially for refunds made to lenders, and requested it be extended to 45 or 60 days. Many commenters stated that the proposal to require refunds be made within 30 days was unreasonable, in light of the proposed 20-day return period for equipment, books, or supplies. These commenters believed it is unfair to allow a student a leisurely 20-day period in which to return equipment, only to force the institution to rush the calculation and processing of a refund. Seven commenters stated that the proposed 30-day refund deadline does not take into account the unavoidable delay in determining unofficial withdrawals. These commenters believed most unofficial withdrawals are not discovered until the end of the subsequent enrollment periods add-drop period, and that several institutions will therefore consistently be unable to meet the 30-day requirement. Three commenters requested that all refund deadlines—for refunds to the program accounts, to lenders, and to students—be modified to be consistent, suggesting 60 days as a reasonable length of time for a refund to be made.

Discussion: The Secretary wishes to reiterate that, as discussed in the preamble of the February 28, 1994 NPRM, the refund deadline given in § 668.22(i)(3) applies *only* to refunds made directly to the student. The Secretary believes refund deadlines are appropriate and necessary. The Secretary would like to clarify that the deadlines for the return of refunds to the Title IV, HEA programs are not "new." These deadlines are not included in the current Student Assistance General Provisions regulations, but in the FFEL programs regulations. The Secretary wishes to clarify that § 668.22(g)(2)(iv) clearly states the 30-day refund requirement given in that paragraph applies to all Title IV, HEA programs other than the Federal Work-Study and FFEL programs. The deadline for refunds to lenders under the FFEL programs is set forth not in this section of the student aid regulations, but in 34 CFR 682.607. The Secretary believes that a 30-day refund deadline, in spite of the 20-day return period for equipment, is reasonable and sound. The Secretary would like to clarify that § 668.22(g)(2)(iv) clearly states the refund deadline is determined according to either the date the student officially withdraws *or* the date the institution determines the student has unofficially withdrawn. The Secretary believes this treatment sufficiently allows for the time needed to determine unofficial withdrawals. The Secretary believes the refund deadline for the purposes of the FFEL programs is appropriately longer than the refund deadlines discussed in this section of the student aid regulations and that this is necessary to account for the added procedures of returning funds to the lender.

Changes: Section 668.22(i)(2) has been amended to clarify that the deadline in that paragraph is applicable only to refunds made to students.

Appendix A

Comments: A few commenters requested the Secretary more specifically define several different terms used in appendix A.

Discussion: The Secretary believes the terms used in Appendix A are standard terms of the educational community, having been in common use for several years, and as such, necessitate no further definition.

Changes: None.

Comments: Three commenters believed that appendix A was originally intended to address proprietary institutions and fails to recognize or treat the specific circumstances of nonproprietary, term-based institutions. Specifically, these commenters stated that mandatory proration of all institutional costs disregards the fact that some institutional costs (such as instructor salary and physical plant costs) are fixed and unaffected by the withdrawal of a small number of students. These commenters requested the Secretary drop appendix A and replace it with requirements that more adequately apply to both proprietary and nonproprietary institutions.

Discussion: The proration of educational costs is required for *pro rata* refund calculations under the Amendments of 1992. The Secretary feels it is reasonable to extend this concept to the Appendix A requirements, in keeping with Congress' intent to provide a fair and equitable refund to Title IV, HEA program recipients. The Secretary notes that, in the past, the guidelines of appendix A were applicable to *any* institution, not just proprietary institutions, if neither an institution's accrediting agency nor its State had refund standards and the institution did not choose to follow refund policies set by another association of institutions and approved by the Secretary. Appendix A is intended to provide a general and stringent refund standard; the Secretary encourages institutions and accrediting agencies to work together in developing accrediting agency refund standards which can be used instead of appendix A standards and which can be better suited to the particular needs and circumstances of individual institutions.

Changes: None.

Comments: A few commenters suggested various changes to the percent of tuition charges that must be refunded for withdrawals which occur during certain portions of the academic period.

Discussion: The Secretary believes the refund percentages provided in appendix A are reasonable and appropriate. The commenters have not given evidence or justification as to why these refund levels should be altered.

Changes: None.

Comments: One commenter suggested that institutions should be allowed to deduct a students unpaid charges from a refund due under appendix A.

Discussion: The June 8, 1993 final regulations require that, for all refund calculations other than a statutory *pro rata* refund calculation, a students unpaid charges be subtracted from the amount an institution could otherwise retain. The Secretary finds no justification for exempting refund calculations under appendix A from this requirement.

Changes: None.

Comments: One commenter believed board charges are adequately treated under part VI of appendix A, and should not be discussed separately in part VII.

Discussion: The Secretary believes housing charges are separate and distinct costs from board charges, even though some institutions voluntarily choose to link these two costs together. A housing contract prescribes charges for a dormitory or housing space that presumably cannot be refilled past a certain point; therefore, such charges are expended at the point the space cannot be refilled. Part VI provides for the refund and retention of such charges accordingly. Board charges, however, are incrementally expended over the length of the period for which the student has been charged; the cost of food the student has not yet consumed cannot fairly be retained by the institution. The contract concept applied to housing charges, therefore, is inappropriate when determining the fair refund of board costs. Part VII, therefore, provides separate and distinct guidance for the refund of board charges. For the purposes of calculating a refund under appendix A, institutions must treat these two charges separately, in accordance with the appropriate guidelines.

Changes: None.

Comments: One commenter suggested adding specific language to Section VIII A to clarify that an administrative fee (of the lesser of $100 or 5 percent of tuition) cannot be retained in the case of a student whose aid package consisted only of FFEL programs funds, because FFEL programs funds must be returned in full to the lender if the student withdraws before attending one class.

Discussion: The commenter is correct regarding the requirement that FFEL programs funds be returned in full in the circumstance noted. However, the Secretary does not believe this or other such requirements should be reiterated in appendix A. The first paragraph of appendix A clearly states that these requirements do not affect an institution's obligation to comply with other Department of Education regulations.

Changes: None.

Comments: Five commenters requested the Secretary clarify the treatment of unofficial withdrawals under appendix A. Specifically, two of these commenters believed the language of Section X clearly implies that a students failure to give withdrawal notice in writing would be just cause to deny the student's refund.

Discussion: The Secretary considers an institution to have met the fair and equitable refund requirement if it uses a policy that meets the *minimum* requirements of appendix A. Although appendix A does not recognize unofficial withdrawals and recommends against the institution's acceptance of oral withdrawal notification, an institution is not prohibited from adapting a more liberal interpretation of this subject into its implementation of appendix A requirements.

Changes: None.

Section 668.23 Audits, Records, and Examinations

Comments: Two commenters suggested including the nationally recognized accrediting agencies among the list of agencies with which institutions participating in the Title IV, HEA programs must cooperate in the conduct of audits, investigations, and program reviews authorized by law. A few commenters also suggested including the nationally recognized accrediting agencies among the list of agencies with which a third-party servicer must cooperate in the conduct of audits, investigations, and program reviews authorized by law.

Discussion: The Secretary agrees with the commenters. Accrediting agencies assist the Secretary in determining institutional participation in the Title IV, HEA programs and should therefore be included in the list of entities that an institution must cooperate with. A third-party servicer, acting as an agent of the institution, should be required to cooperate with any accrediting agency that accredits an institution with which the servicer contracts to administer any aspect of the institution's participation in the Title IV, HEA programs.

Changes: This section is revised to include nationally recognized accrediting agencies in the list of entities that an institution and a third-party servicer must cooperate with in the conduct of audits, investigations, or program reviews authorized by law.

Comments: One commenter was concerned that the requirement for a third-party servicer to cooperate with a guaranty agency and other entities in the conduct of audits, investigations, and program reviews, would give the guaranty agency access to proprietary information of that servicer. The commenter noted that guaranty agencies directly compete for the services provided by other third-party servicers. The commenter suggested limiting cooperation to only include information that a holder of loans would be required to make available.

Discussion: The Secretary disagrees with the commenter. These regulations only require access to a third-party servicer's records to the extent necessary to monitor compliance with applicable statutes, regulations, special arrangements, agreements, and limitation.

Changes: None.

Comments: Another commenter felt that a third-party servicer should not be required to cooperate with these entities to the extent that that cooperation includes the copying of computer programs that are the sole property of the servicer. The commenter felt that any copying would violate copyright laws included in the licensing agreement to the software; the commenter recommended deleting this provision.

Discussion: These regulations require access to a third-party servicer's records to the extent necessary to monitor compliance with applicable statutes, regulations, special arrangements, agreements, and limitations. These regulations do not require, nor does the Secretary expect, a third-party servicer to violate any copyright laws governing computer programs. Nevertheless, a third-party servicer, like an institution, is expected to make available for examination and copying all relevant information, including the computer program.

Changes: None.

Comments: Several commenters suggested amending the provisions of § 668.23(b)(3) governing reasonable access to an institution's personnel to allow an institution the basic right to protect its interest during a compliance review by having an attorney, a management representative, or a tape

recorder present when the Department of Education conducts an interview with a person employed by the institution. A few commenters suggested that these provisions violate an employee's constitutional rights to counsel. One commenter stated that as a minimum, an institution should have the opportunity to build its own record and rebut inaccurate charges by having tape recordings of interviews between its employees and the Department of Education's representatives. Several commenters were against the provisions in this section that require a third-party servicer, in the conduct of audits, investigations, or program reviews, to allow its individual employees—those employees connected with the servicer's administration of the Title IV, HEA programs—to be questioned in private, without management being present or without the questioning being tape recorded. Many of these commenters contended that this requirement violated an individual's right to due process. One commenter felt that the Secretary was overstepping his statutory authority in this matter.

Discussion: The Secretary has already responded to similar comments in the preamble to final regulations for parts 600 and 668 that was published in the **Federal Register** on July 31, 1991 (56 FR 36682). The Secretary continues to disagree with these views and in the three years since these regulations have been in effect has received no evidence that the claims of the commenters are justified. With respect to third-party servicers, these provisions simply add requirements for third-party servicers that parallel current requirements for institutions participating in the Title IV, HEA programs.

Changes: None.

Comments: Many commenters recommended that an institution should be able to use a third-party servicer's annual compliance audit report to satisfy the portion of an institution's audit requirement for those areas that the servicer has contracted to administer on behalf of the institution. These commenters noted that this idea would eliminate duplication of effort by independent auditors auditing a third-party servicer's activities.

Discussion: The Secretary generally agrees with commenters that an institution may use a third-party servicer's audit report to cover those areas of an institution's participation in the Title IV, HEA programs that the institution has contracted with the servicer to administer. However, if an institution is required to have audited additional areas of its administration or is required to use different procedures in having the audit performed than the servicer then the institution may not be able to use fully the results of the servicer's audit. An institution is always responsible for ensuring that a compliance audit of the institution's participation in the Title IV, HEA programs includes all aspects of the institution's participation.

Changes: None.

Comments: Forty-three commenters suggested that an institution ought to be permitted to remain under the biennial audit requirement if that institution did not have deficiencies in the prior audit report of more than five percent of the institution's total Title IV, HEA program funds. Many of these commenters pointed out that this modification would parallel a similar provision in the proposed § 668.15 governing financial responsibility. At a minimum, the commenters recommended that these provisions be modified to reflect that an institution that had no deficiencies that required a monetary adjustment be permitted to remain under the biennial audit requirement. Several commenters asked the Secretary to clarify what are considered to be no deficiencies and material exceptions. One commenter suggested specifying certain amounts in the use of those terms. Three commenters supported the Secretary's proposal to provide exceptions to the annual audit requirement for third-party servicers that administer small amounts of Title IV, HEA program funds. One commenter argued that third-party servicers administering less than $250,000 in Title IV, HEA program funds should not be excluded from having an annual audit performed. One commenter recommended that instead of requiring third-party servicers to have performed a compliance audit at least every two years if the servicer administers less than $1,000,000 in Title IV, HEA program funds, that that threshold should be increased to $5,000,000. Three commenters urged the Secretary to require all third-party servicers to have an annual audit performed. One commenter suggested defining what is meant by a material exception.

Discussion: The Secretary has reevaluated his proposal in the February 17 and 28, 1994, NPRMs and upon a further examination of section 487(c) of the HEA and information surrounding the intent of the statute, has determined that the proposals were inconsistent with the requirement for an institution to have performed, without exception, on an annual basis, a compliance audit of the institution's administration of its Title IV, HEA programs or a third-party servicer to have performed, without exceptions, on an annual basis, a compliance audit of the servicer's administration of any aspect of its administration of an institution's participation in a Title IV, HEA program. The Secretary appreciates the comments and suggestions provided with respect to the basis for exempting institutions and third-party servicers from the annual audit requirement. While the Secretary cannot adopt these in the regulations, the Secretary is considering them in the development of changes to the Department of Education's audit guides. These changes are being designed to reduce administrative costs by allowing institutions that meet certain performance-based or funding criteria to have performed compliance audits under a reviewed or compiled basis rather than fully audited.

Changes: The provisions that provided for exceptions to the annual audit requirements for institutions and third-party servicers have been deleted in these final regulations. The proposed audit exceptions in this section have been removed. This section has been revised to require that all institutions have performed an annual compliance audit of the institution's administration of its Title IV, HEA programs; and to require that all third-party servicers have an annual compliance audit performed of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract.

Comments: Many commenters suggested amending § 668.23(c)(8) to establish deadlines for the submission of audit reports, rather than allowing the Inspector General to specify these deadlines in the audit guides. Several commenters questioned whether the Inspector General has the authority to establish this requirement without regulations. Another commenter suggested that the regulations contain a provision that would require institutions to meet the deadlines specified in the audit guide, but stipulate that under no circumstances would the institution be required to submit its audit report earlier than four months following the expiration of the audit period.

Discussion: Upon review of the commenters' concerns, the Secretary agrees that because these regulations require that an audit report must be submitted in a timely manner, the regulations should provide institutions and third-party servicers with the specific dates for submission of audit reports. The Secretary believes that a period of 120 days from the end of the

institution's or servicer's fiscal year provides an institution or servicer with a sufficient period of time to have an audit performed and to submit the audit report to the Department.

Changes: The regulations have been revised to state that an institution or third-party servicer must submit its audit within 120 days of the end of its fiscal year. An institution or third-party servicer that has an audit performed under the Single Audit Act must submit the audit report in accordance with the deadlines specified in that act.

Comments: Many commenters were opposed to the provision that the Secretary could require a third-party servicer to release the results of an audit to cognizant guaranty agencies, eligible lenders under the FFEL programs, State agencies, nationally recognized accrediting agencies, and State Postsecondary Review Entities on the grounds that these entities are not affected by the servicer's actions and release of information in the audit report could unnecessarily damage a third-party servicer's reputation.

Discussion: The Secretary disagrees with the commenters that the referenced entities are not affected by a third-party servicer's actions. The Secretary believes that by providing information-sharing among the appropriate authorized entities that the Secretary relies on to help provide oversight of Title IV, HEA program participants, that the Secretary is responding to Congressional intent. A third-party servicer acts as an agent of the institution and is responsible for administering a portion of an institution's participation. As such, the various entities involved in program oversight will have a genuine need for access to records of, or information about, the servicer. The Secretary therefore considers that the audit results of third-party servicers must be included in the information available to the appropriate oversight bodies monitoring institutional compliance with Title IV, HEA requirements.

Changes: The Secretary is revising paragraph (c)(4) of this section to include the Secretary of Veteran Affairs in the list of entities that the Secretary may require an institution or third-party servicer to provide the results of an audit to.

Comments: One commenter felt that an audit guide specifically developed for third-party servicers was necessary to comply with the requirements of this section. Another commenter was of the opinion that the period covered by a third-party servicer's first audit should not start until after audit guidance is available from the Department of Education.

Discussion: The Department of Education's Office of Inspector General is working on developing audit guides applicable for compliance audits performed of institutions and third-party servicers. The Secretary expects that these guides will be available before the initial audit period covered by an audit performed of a third-party servicer begins.

Changes: None.

Comments: Regarding the requirement for an institution to maintain records on a student's placement if the institution has a placement service used by the student, four commenters were concerned that application of this requirement to all institutions for all types of student employment placement might be overreaching and could result in institutions electing to terminate their student employment service rather than comply with burdensome recordkeeping requirements. Commenters pointed out that at some large institutions, student employment centers often act as clearinghouses for posting jobs and professional career opportunities, but frequently lacked the resources to track actual placement. Most often, employment information is made available to students and that information is simply removed from posting once the employer indicates the position has been filled. Commenters maintained that a formal follow-up process on student employment is not generally systematic and obtaining appropriate documentation would discourage institutions from continuing to provide this service to students. Two commenters recommended removing this requirement from the regulations. Three other commenters suggested that the Department of Education revise this provision of the regulations so that it would apply only to institutions that are otherwise required to track student employment as a condition of Title IV, HEA program eligibility or pertains only to those students for which the institution must otherwise maintain employment records.

Discussion: The Secretary does not intend for this requirement to be burdensome to institutions. This provision merely requires an institution with a placement service to document that the institution does what it claims to do—namely, place students in jobs.

Changes: None.

Comments: Two commenters objected to the requirement that an institution establish and maintain records that support the educational qualifications of each regular student admitted to the institution whether or not that student receives Title IV, HEA program assistance, that are relevant to the institution's admission standards. Both commenters believed that institutions should only be required to establish and maintain summary or aggregate information on the educational qualifications of students admitted to the institution. This aggregate data would be available to the Secretary only if the Secretary could demonstrate a compelling need to review the information.

Discussion: The Secretary believes this provision is necessary to establish whether an institution is in compliance with the statutory admission requirements of sections 1201(a) and 481(b) and (c) of the HEA for purposes of institutional eligibility and participation in the Title IV, HEA programs.

Changes: None.

Comments: Two commenters urged the Secretary to include a requirement that institutions retain records documenting whether and when a student completes his or her educational program. This information is needed to verify completion rates.

Discussion: The Secretary has taken these comments under consideration, but concluded that other regulatory provisions governing the completion rate calculations contain requirements to retain documentation to support the computations.

Changes: None.

Section 668.24 Audit Exceptions and Repayments

Comments: Two commenters supported the Secretary's proposed requirement for a third-party servicer to notify all institutions for which the servicer provides the same service, in addition to those institutions under whose contract the servicer incurred a liability for a Title IV, HEA program violation. Other commenters felt that this requirement was excessively broad. Several of these commenters argued that this requirement would unnecessarily damage a third-party servicer's reputation. Several commenters noted that the Secretary's proposed notification requirements were not all that different from full notification of all institutions with which the servicer contracts. One commenter suggested that third-party servicers should be required to notify institutions receiving the same service for which the servicer owes a liability only if that liability is material. One commenter recommended that a third-party servicer that is assessed a liability should have a reasonable amount of time to provide the notification to the servicer's clients.

Another commenter was of the opinion that the Secretary notify all of the institutions with which the servicer contracts of the Secretary's determination at the same time that the servicer is notified.

Discussion: The Secretary disagrees with the commenters that objected to the notification requirements. If a third-party servicer is assessed liability for a violation of a Title IV, HEA program requirement, any institution for which the servicer provides the same service in which the violation was found is potentially at risk as a result of the servicer's actions. Obviously, each institution under whose contract the servicer committed a violation should be notified because the Secretary holds that institution responsible for the full amount of the liability. In addition, each institution that contracts with the servicer for the same service in which the violation was found should also be informed of the servicer's violation. The Secretary believes that an institution that receives the same service should be informed of the servicer's violation of any Title IV, HEA program requirement because the servicer may commit a similar violation at that institution and the institution could be held liable for that violation. This notice will also allow an institution to take corrective action without waiting for formal action by the Secretary.

With respect to the commenter who was concerned that third-party servicers should have a reasonable amount of time in which to notify affected institutions of the Secretary's determination to assess a liability against the servicer, the Secretary does not believe that that time frame needs to be quantified. Servicers are expected promptly to notify affected institutions of the Secretary's determination because those institutions are also responsible for violations committed by their servicers. Servicers that fail to notify institutions may jeopardize an institution's ability to provide information to show that questioned expenditures were proper or take corrective action to mitigate violations caused by a third-party servicer. In reviewing a third-party servicer's appeal of the Secretary's determination, the Secretary will take into consideration whether or not the servicer notified affected institutions promptly of the Secretary's determination.

The Secretary does not agree that it is necessary for the Department of Education to provide notice to all of the institutions with which a third-party servicer contracts if that servicer is assessed a liability. A third-party servicer, as a responsible agent of an institution, has an obligation to keep that institution informed of any developments that might possibility jeopardize the institution's participation in the Title IV, HEA programs. If the Secretary seeks to assess liability against an institution for a third-party servicer's conduct, he will provide the appropriate notice to the affected institution.

Changes: None.

Comments: Four commenters opposed the provision in this section that required an institution to be responsible for payment of any liability owed by the institution's third-party servicer for a violation of the institution's participation until the amount is paid in full. One of these commenters argued that the third-party servicer should be held entirely accountable for payment of any liabilities incurred for the servicer's violation of Title IV, HEA program requirements.

Discussion: In the NPRM published on February 17, 1994, the Secretary repeatedly stated that an institution is always responsible for the actions of any of its third-party servicers. This responsibility includes assuming payment of any liability incurred by the servicer as a result of a violation of a Title IV, HEA program requirement by the servicer while administering aspects of the institution's participation in the Title IV, HEA programs. See § 668.25(c)(3). No institution will be required to answer for servicer violations without the opportunity to have such determinations reviewed under the procedures established in these regulations.

Changes: None.

Comments: Two commenters were concerned with the provision in this section governing the ability of the Secretary to perform an administrative offset to collect funds owed under the procedures of this section. One of these commenters suggested that the Secretary only use administrative offset to collect funds if a third-party servicer has not entered into an agreement with the Secretary to repay those funds. The other commenter thought that this provision amounted to the equivalent of an emergency action without having to afford an institution or third-party servicer a show-cause hearing. Several commenters were opposed to the provision in this section governing the ability of the Secretary to collect on a surety or third-party guarantee before the conclusion of appeal proceedings. These commenters contended that this provision assumes that the party is guilty before it is proven. Two of the commenters were also opposed to this provision on the grounds that audit findings of the Department of Education are sometimes insupportable or in error and that to collect on a surety or guarantee before those findings can be proven wrong is simply improper.

Discussion: The provisions in this section governing additional steps that the Secretary may take to collect funds owed under the procedures of this section are necessary to allow the Secretary to act quickly to protect Federal funds and insure that funds are available for collection. Institutions have a distinct financial incentive to cause delay and prolong any appeal of audit determinations. Some institutions use delays to either hide assets or drain assets so that none remain for collection; others may attempt to draw increased amounts of Title IV, HEA program funds prior to any final determination. The commenters are incorrect in stating that administrative offset denies procedural protection. Under the Department's offset regulations in 34 CFR part 30, the Department provides written notice and an opportunity to inspect records and receive an oral hearing. The Department may offset prior to completing the procedural requirements where failure to offset may substantially prejudice its ability to collect. In such cases, the Secretary completes the procedural requirements promptly thereafter and returns any funds later found not to be owing.

With respect to comments about the Secretary's ability to collect a surety or guarantee before final determinations are concluded or all appeal procedures are exhausted, the Secretary does not agree with the commenters. Financial surety is provided to the Department as a condition of participation to insure that funds are available to satisfy liabilities. The Secretary would only attempt recourse in cases where there is a need to provide relief to students or borrowers affected by the actions of the institution or third-party servicer, or where the terms of the surety do not guarantee that funds will be available after appeals are completed. For example, in the case of an institution that has failed to pay refunds owed to students that attended that institution, the Secretary believes that the need to collect in advance to pay those refunds outweighs deferring collection to final determinations or until the exhaustion of all appeal procedures are completed.

Changes: The reference to 34 CFR 30.28 is revised to refer to 34 CFR part 30 to clarify that the procedural protections in that part related to administrative offset apply.

Section 668.25 Contracts Between an Institution and a Third-Party Servicer

Comments: Many commenters supported fully the Secretary's proposal in this section that requires a third-party servicer to assume joint and several liability with an institution for any violation by the servicer of any statutory or regulatory provision relating to Title IV of the HEA. One of these commenters noted that only the assumption of full liability by a third-party servicer could ensure the protection of public funds.

In addition, many commenters supported the application of some type of liability on a third-party servicer for the servicer's violation of a Title IV, HEA program requirement, although most of these commenters recommended that the Secretary cap liability at the fees and compensation received by the servicer from the institution. A few commenters supported the Secretary's compromise to limit the liability of a third-party servicer to the fees and compensation received from the institution if the servicer was not an affiliate of the institution and to assess full joint and several liability against the servicer if the servicer was an affiliate of the institution. Other commenters believed in the concept of joint and several liability for third-party servicers only to the extent that it could be unequivocally proven that the servicer is the one at fault, or that the violation of a Title IV, HEA program requirement was more serious than simple human error.

Many commenters opposed requiring a third-party servicer to assume joint and several liability with an institution for a violation by the servicer of a Title IV, HEA program requirement. These commenters argued that to impose joint and several liability on a third-party servicer would (1) lead to increased servicing fees to compensate for increased risk assumed by the servicer; (2) force out servicers not willing to assume a level of risk in excess of the servicer's fees and compensation; and (3) interfere in contractual matters that should be left to the parties involved. These commenters recommended that instead of imposing liability on a third-party servicer, to increase accountability of the administration of the Title IV, HEA programs, the Secretary should instead focus on an institution's administrative capability and financial responsibility to achieve greater accountability.

Several commenters questioned what happens to existing contracts with institutions that were negotiated under a different assumption of liability. A few of these commenters asked the Secretary not to impose retroactive liability for contracts that did not incorporate or price for such an event.

Discussion: The Secretary appreciates the support from the commenters who agreed that third-party servicers should be jointly and severally liable with an institution with which the servicer contracts for any violation by the servicer of a Title IV, HEA program requirement. The Secretary agrees with these commenters that third-party servicer liability is necessary to insure compliance with Title IV, HEA program requirements. Servicers who must stand behind their work financially are more likely to use the high standard of care expected of Title IV, HEA program participants.

The Secretary has reexamined his position with regard to adopting the compromise in the NPRM to limit joint and several liability to the fees and compensation that a third-party servicer has received from the institution if the servicer was not an affiliate of the institution. The Secretary does not believe that anything less than the full assumption of liability can fully protect the interest of Federal tax dollars in the form of Title IV, HEA program assistance. Otherwise, servicers have no financial incentive to insure complete program compliance. With respect to the comment that a third-party servicer should not be assessed liability unless it can be proven that the servicer is at fault, the Secretary does not consider a third-party servicer to be jointly and severally liable with an institution unless the servicer is the one that has violated a Title IV, HEA program requirement. The Secretary believes that if a third-party servicer violates a Title IV, HEA program requirement that the servicer should be held liable, along with the institution with which the servicer contracts, because a violation, even an error, impacts on the integrity of the Federal student financial assistance programs, and should be redressed.

The Secretary disagrees with the comments that requiring servicer liability will necessarily increase fees so as to deny access to servicing. Some of these commenters noted that some servicers may price their service at a low-level to reflect the fact that they assume no liability. The Secretary does not believe that institutions or federal taxpayers are well served by servicers who are unwilling to stand behind the quality of their work. As agents of institutions participating in the Title IV, HEA programs, servicers are also subject to an institution's fiduciary responsibility to use the highest standard of care and diligence. By rejecting any responsibility for the quality of its work, the Secretary believes any such servicer cannot be expected to perform with the required concern for the proper expenditure of federal funds. The Secretary notes that he received favorable comments from organizations that are third-party servicers, or institutions who utilize third-party servicers, who did not raise any issue of adverse impact on fees. The Secretary has no doubt that these and similar servicers will continue to compete effectively for institutional clients at competitive prices. The Secretary notes that the higher education servicing industry is highly competitive which should restrain any excessive fee increases; in fact, by requiring all servicers to assume liability, the Secretary believes that this requirement should level the playing field by eliminating underbidding by those servicers who assume no responsibility for the quality of their work.

The Secretary notes that servicers are not being asked to serve as guarantors for their client-institutions, but merely being required to answer for the consequences of their own conduct. In this regard, if the services they provide have no adverse financial impact, there is no financial exposure for such a third-party servicer, or reason to increase fees charged.

With respect to those commenters who contended that the liability provision interfered in contractual matters that should be left up to the parties involved, the Secretary disagrees. The Secretary strongly believes that it is necessary to include this provision in the regulations because a third-party servicer administers aspects of the Title IV, HEA programs that are funded with Federal tax dollars. Therefore, it is entirely appropriate to establish requirements to safeguard such funds. Simply leaving this area to the parties, leaves open that possibility that no minimal care will be exercised by the servicer. An institution is free, however, under these regulations to agree to indemnify a third-party servicer in the event a third-party servicer must make any payment to the Secretary. The Secretary notes that these regulations will have the salutary effect of requiring institutions and servicers to exercise greater care in the selection of their contractual partners.

The Secretary would like to make clear that a third-party servicer and an institution are only jointly and severally liable for any violations of any statutory or regulatory provision applicable to Title IV of the HEA and not for other types of violations. The Secretary is

imposing requirements in contracts between third-party servicers and institutions only to the extent that a third-party servicer or institution administers any aspect of the Title IV, HEA programs.

With respect to the commenters who asked about the impact on existing contracts, the Secretary states that third-party servicers will have no joint and several liability for periods prior to the effective date of these regulations. The Secretary expects that once these regulations become effective, all contracts between third-party servicers and institutions will have to include the requirements provided in § 668.25(c), including the requirement that a third-party servicer is jointly and severally liable with the institution for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory prescribed under that statutory authority, and any applicable special arrangements, agreements, and limitations entered into under the authority of statutes pertaining to Title IV of the HEA. This may require modification of existing contracts.

Changes: None.

Comments: Some of the commenters questioned the provisions of this section governing a third-party servicer's responsibility to report all suspected instances of fraud to the Department of Education's Office of Inspector General. Two of these commenters recommended that in order to meet this requirement that third-party servicers be given an unqualified privilege exempting the servicer from any liability in connection with the referral of an institution to the Department of Education's Office of the Inspector General. In addition, one of the commenter questioned the Secretary's requirement to refer suspected instances of fraud or other criminal misconduct in connection with the Title IV, HEA programs. The commenter was concerned that if the servicer was wrong that the servicer's reputation would be irrevocably damaged. One commenter suggested that a third-party servicer should only be required to report information indicating fraud only where there is proof to substantiate the belief that an institution may have engaged in fraud.

Discussion: The Secretary recognizes that third-party servicers will not always be privy to sufficient information to identify possible fraud or criminal misconduct on the part of an institution. However, if there are identifiable circumstances in which a reasonable person would believe that an institution has deliberately misreported information, recklessly reported information without regard for its accuracy, or altered official documents, then a third-party servicer should report such information to the Office of Inspector General. The servicer is not required to reach a firm conclusion as to the impropriety of the institution's actions or provide evidence to substantiate possible criminal charges, but is required to simply refer the matter to the Department of Education's Office of Inspector General for appropriate action. Since this referral requirement is a required part of any contract between a third-party servicer and an institution, an institution has no basis to object to any referral made pursuant to this requirement. The Secretary thus believes that it is unnecessary to provide an unqualified privilege as suggested by some commenters; moreover, such a privilege would allow referrals even where there is no reasonable basis to believe misconduct has occurred. The Secretary assures third-party servicers that a third-party servicer will not be held responsible for any violations that the servicer has not itself perpetrated or aided and abetted. However, the Secretary will regard failure to take appropriate action when there is reasonable cause to believe that fraud or criminal misconduct has occurred to be a serious violation of these regulations and of a participant's fiduciary obligations.

Changes: None.

Comments: One commenter supported the concept of the provision in this section governing the requirement that an institution must notify the Secretary within 10 days of the date that a contract between an institution or third-party servicer is modified or terminated or within 10 days of the date that a third-party servicer, under contract with that institution, goes out of business, stops providing services, or files a petition for bankruptcy. However, the commenter believed that the burden of notifying the Secretary of any changes to the contract should rest with the servicer. Many commenters opposed this provision and argued that this requirement constituted needless paperwork on the part of the institution. These commenters contended that any changes to a contract between a third-party servicer would be examined in the course of having performed an annual audit.

One commenter recommended that the notification time frame be changed from 10 days to 30 days. Another commenter recommended that the time frame either be revised to state that the institution must notify the Secretary promptly of any changes or, barring that, within 90 days.

Discussion: Section 498(b)(3) of the HEA requires an institution to submit to the Secretary with its application for participation a copy of any contract between the institution and a third-party servicer and a description of that servicer; section 487(a)(3) requires an institution to submit information related to its administrative capability and financial responsibility. The Secretary interprets these statutory provisions to require institutions to keep the Secretary apprised of any contracts between themselves and third-party servicers, including, any significant modifications to those contracts, or any terminations of those contracts. The Secretary need contract information provided by institutions to monitor the responsibilities of third-party servicers. For example, if a program review uncovers a Title IV, HEA program violation at an institution in an area that a third-party servicer has recently contracted to administer, the Secretary must have current information to identify other institutions where the same servicer may have committed the same violation. The Secretary believes that 10 days constitutes a reasonable time period in which an institution must inform the Secretary of any changes or terminations of a contract while at the same time providing the Secretary with current information on those contracts. This time frame is consistent with the other reporting requirements concerning institutional eligibility under 34 CFR 600.30, thereby facilitating reporting as an institution will not have to track different reporting deadlines.

Changes: None.

Comments: One commenter objected to the requirement that a third-party servicer return all applicable records to the institution if the contract between the servicer and institution is terminated, or if the servicer stops providing services, or if the servicer files a petition for bankruptcy. The commenter believed that these records were the servicer's sole guarantee that the institution would pay the servicer any fees or compensation still owed to the servicer by the institution. The servicer also argued that the absence of these records would adversely affect the ability of an independent auditor in the event the servicer had a compliance audit performed of its administration of the institution's participation in the Title IV, HEA programs.

Discussion: If a third-party servicer must return records to an institution, these regulations do not prohibit a third-party servicer from retaining copies of the original records in order to facilitate a compliance audit. The Secretary notes

that the expense of copying should be unnecessary as an institution must provide a third-party servicer's independent auditor with access to records pursuant to 34 CFR 668.23(b).

With respect to the comment specifying that record retention was a third-party servicer's sole guarantee that an institution owing that servicer unpaid fees or compensation would pay, the Secretary strongly objects to any use of Title IV, HEA program records as bargaining chips in a pay dispute. Access to those records is required for uninterrupted administration of those programs. No servicer should hold these records hostage.

Changes: None.

Comments: Several commenters were concerned with the provisions in this section that limited a third-party servicer's ability to enter into a written contract with an eligible institution if the servicer had been limited, suspended, or terminated by the Secretary within the past five years.

Discussion: The Secretary understands the commenters' concerns but does not believe that those concerns are justified. As the Secretary explained in the NPRM, if a third-party servicer is found to exhibit indicators of a questionable past performance, the servicer would be prohibited from entering into a written contract with an institution to administer any aspect of the institution's participation in the Title IV, HEA programs. However, notwithstanding this prohibition, the Secretary would consider the servicer still eligible to contract with an institution if persons or entities with substantial control over the servicer agree to be responsible for any potential liability arising from the servicer's administration of the Title IV, HEA programs.

Changes: None.

Section 668.26 End of an Institution's Participation

Comments: Several commenters believed that if an institution's participation ends, it would be less disruptive to currently enrolled students who are receiving Title IV, HEA program assistance to allow the students to continue to be enrolled and receive Title IV, HEA program assistance until they complete their educational program. The commenters suggested that immediate termination of all funds under the Title IV, HEA programs would likely cause closure of the institution and costs to the government resulting from forgiveness of the students' loans. A few commenters argued that if an institution's participation has ended, it would be unrealistic to require the institution to inform immediately the State in which the institution is located of its loss of participation in the NEISP or SSIG Program, because there would be no one to make the notification. The commenters suggested that it would be more appropriate for the Secretary to make the notification in this case.

Discussion: Commenters misunderstood that immediate termination of Title IV, HEA program funds occurs for students at an institution whose participation ends but that does not close. The availability of those funds continues through the end of the payment period or period of enrollment in which the participation ends for enrolled students who have received a commitment for those funds. To provide funds beyond that point, however, would oblige the Secretary in effect to continue an institution's participation after the institution no longer qualifies for that participation. With regard to the commenters' objections to notifying a State upon the loss of an institution's participation in the NEISP or SSIG Program, it is no more unreasonable to expect an institution to notify the State than to expect the institution to notify the Secretary of the loss of participation in any other program. Institutions have been complying with this requirement for 20 years.

Changes: None.

Comments: Many commenters contended that if the Secretary receives a notice from a SPRE that the institution's participation should be withdrawn, the institution's participation should not end until the institution has had the opportunity to appeal to the Secretary or appropriate authority. Many commenters believed that an institution's participation should not end if the institution's program participation agreement expires due to the Secretary's failure to approve the application for a renewal of participation in a timely manner. One commenter suggested that, if an institution's participation is terminated as a result of misuse of funds under the Title IV, HEA programs, the Secretary prohibit the institution from crediting to a student's account or delivering to the student the proceeds of a second or subsequent disbursement of a Federal Stafford or Federal SLS loan after the institution's participation in the Title IV, HEA programs ends. The commenter believes it would be inappropriate to allow an institution that had previously misused funds under the Title IV, HEA program to disburse additional funds.

One commenter disagreed with the requirement that, if an institution's participation in a Title IV, HEA program ends, the institution must submit a letter of engagement for an audit of all funds received under that program within 45 days. The commenter stated that engagement letters are not required under generally accepted auditing standards or Government auditing standards.

Discussion: Under the State Postsecondary Review Program, a SPRE does not inform the Secretary that an institution's participation should be terminated until the SPRE has afforded the institution its full appeal rights. A further discussion of this process is found in the preamble to the regulations for the State Postsecondary Review Program. The Secretary agrees with those commenters who were concerned about the expiration of an institution's participation if the review of a properly completed application, submitted in a timely manner, has not been completed before the expiration of participation. An explanation of the changes made to accommodate this circumstance is found in the section of the *Analysis of Comments and Changes* that addresses certification procedures (§ 668.13).

The Secretary appreciates the concern of the commenter that an institution terminated for misuse of Title IV, HEA program funds ought not be permitted to continue to handle those funds, even for a limited period. The Secretary, however, considers that the honoring of commitments made to students is equally important and, provided that the institution continues to offer education, insists that those commitments be honored. The Secretary can also take additional steps to safeguard these remaining funds when appropriate. The institution remains liable for the proper handling of Title IV, HEA program funds even after its participation is terminated. Naturally, should the institution reapply for participation in a Title IV, HEA program or should a person with substantial control over the institution also have substantial control over another institution, the way that the terminated institution complied with the requirements of this section will be a factor in determining the institution's readmission into the programs or the person's continued role in the administration of the programs.

The Secretary needs assurance that if an institution's participation in a Title IV, HEA program ends, the institution will make arrangements for a final audit of the institution's administration of the program. A letter of engagement provides the Secretary authoritative

notification that the institution is carrying out its responsibility to end its participation in a way that will allow the Secretary to determine whether any further liabilities or corrective action is required. Generally accepted auditing standards and the GAO's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* do not prohibit this requirement.

Changes: None.

Comments: Two commenters recommended that the Secretary expand the exception for institutions that close as a result of a natural disaster. They suggested that the exemption apply to an institution that closes as a result of fire, a weather emergency, or other causes beyond the control of the institution. One commenter suggested that an institution that is closed or stops providing educational programs for fewer than seven instructional days should remain a participating institution.

Discussion: The Secretary adopts the exception for closures as a result of a natural disaster because this event is readily verifiable. The Secretary acknowledges that other circumstances may require an institution to close on a temporary basis, but does not consider these other circumstances sufficient to establish additional exceptions to the requirements of this section, because the period of closure will be too short. In most such instances, the institution has recourse to other remedies, such as the arrangement for the use of other facilities. Indeed, the definition of *academic year* for most purposes actually recognizes that a week of instructional time can include a number of days in which instruction does not occur.

Changes: None.

Subpart G—Fine, Limitation, Suspension, and Termination Proceedings

Section 668.81 Scope and Special Definitions

Comments: Several commenters believed that the appeal procedures of this section should apply to institutions that were provisionally certified if the Secretary revokes the institution's provisional certification. Many commenters believed that the appeal procedures of this section should apply to institutions if the institution's period of participation has expired. Several commenters suggested that the Secretary limit, suspend, or terminate the eligibility of a third-party servicer to contract with an institution only to those services and Title IV, HEA programs for which the servicer has been found to be in violation and only to those institutions on whose behalf the servicer committed the violation. The commenters claimed that the servicer's activities and the Secretary's sanctions might sometimes concern violations would have no material relationship to the servicer's ability to provide other servicing functions to institutions which it serves and to other institutions unaffected by the original violations.

Discussion: See discussions under the section of the *Analysis of Comments and Changes* that address certification procedures (§ 668.13). The Secretary does not agree with the commenters' suggestion that the Secretary should limit, suspend, or terminate the eligibility of a third-party servicer to contract with an institution only to those services and Title IV, HEA programs for which the servicer has been found to be in violation and only to those institutions on whose behalf the servicer committed the violation. The Secretary imposes a sanction against a third-party servicer for a violation of a Title IV, HEA program requirement for a specific reason, to protect the integrity of the Title IV, HEA program. The Secretary, if necessary, must reserve the right to limit, suspend, or terminate a third-party servicer's eligibility to administer any aspect of the Title IV, HEA programs for any institution to ensure that further harm does not occur to one or all of those programs. However, where appropriate, any limitation, suspension or termination action may be limited in scope as suggested.

Changes: None.

Section 668.82 Standard of Conduct

Comments: One commenter believed that individual employees should not be responsible for actions beyond their control; instead, they should be held responsible for actions that are reasonable. For example, to be held responsible for accounting errors of other departments may be going beyond what is reasonable. Two commenters argued that the servicer is merely under contract to provide particular services, and is in no position to monitor the institution's compliance with other fiduciary matters. They also claimed that establishing a fiduciary standard also would establish enormous liability for areas beyond the servicer's control. These commenters recommended that clarification is needed in the regulations to ensure that a third-party servicer could only be held to a fiduciary standard for funds under that servicer's direct control.

Discussion: The Secretary holds a third-party servicer to a fiduciary standard of care and diligence only in the exercise of the servicer's Title IV, HEA program responsibilities that the servicer has contracted with the institution to perform. The Secretary does not expect a third-party servicer to be responsible for aspects of administration of the Title IV, HEA programs or funds attributed to those programs that the servicer has not contracted with an institution to administer. With respect to the comment on the responsibility of individual employees, the Secretary notes that these regulations apply a standard of conduct only to the third-party servicer itself; individual employees are not held accountable under this provision. However, the Secretary expects a third-party servicer to train its employees to perform their duties consistent with the servicer's fiduciary obligations.

Changes: None.

Comments: One commenter was concerned that the provisions governing a third-party servicer's fiduciary duty would limit the servicer's ability to acquire its servicing fees from funds administered by the servicer.

Discussion: A third-party servicer entrusted with Title IV, HEA program funds may not use those funds to compensate itself for fees owed to the servicer by an institution. As provided in § 668.18, federal funds may only be used for Title IV, HEA program purposes, and may not be hypothecated or used for collateral. The only exception would be where an institution has agreed to pay to the servicer all or part of the administrative cost allowance payable to an institution under the Title IV, HEA program regulations. Otherwise, the Secretary will regard any effort to take servicing fees directly from federal funds as a grave violation of a third-party servicer's fiduciary obligation, for which its eligibility to contract with any institution should be terminated.

Changes: None.

Comments: Several commenters believed that it is unreasonable to expect a third-party servicer to be held to the same fiduciary standards as the institution.

Many commenters stated that the proposed language could be read to mean that if any employee of a third-party servicer (e.g., janitor or painter) has been convicted of or has pled *nolo contendere* to any crime involving government funds (not specifically Federal student aid), the servicer is subject to termination. Four of these commenters voiced concern about the issue of due process, because the ability to screen all applicants is very limited

due to laws regarding privacy and nondiscrimination in hiring. One of the commenters stated that such removal may be prevented by State or Federal laws and perhaps expose the servicer to liability. One commenter believed that the provisions should be effective only for new contracts, because many servicers currently have contracts with subcontractors that do not contain the restriction regarding removal of an affiliation, and the servicer could be liable for breach of contract.

Discussion: The Secretary does not agree with the comment that a third-party servicer should not be held to the same fiduciary standard as an institution. As an agent of an institution, a third-party servicer administers aspects of the institution's participation in the Title IV, HEA programs. Therefore, it is necessary to hold a third-party servicer to the same level of fiduciary responsibility as the institution in handling or influencing the use of Title IV, HEA program funds.

The Secretary agrees with those commenters who argued that a third-party servicer should not be considered to have violated its fiduciary duty with regard to the conduct of any person, entity, or officer or employee of an entity with which the servicer contracts, if that person or entity does not have Title IV-related responsibilities. For example, the Secretary would not hold the conduct of a custodian employed by a third-party servicer as an element in determining that the third-party servicer has violated its fiduciary duty, if that custodian had no responsibility for administering a Title IV, HEA program.

With respect to those commenters who were concerned that the removal of an agent of a third-party may violate due process or may be prohibited by Federal or State law or may be a breach of contract, the Secretary does not believe that those prohibitions exist. However, the Secretary recommends that third-party servicers modify their contract terms to specify that the servicer is prohibited from engaging any entity to administer any aspect of the Title IV, HEA programs that meets the criteria in paragraph (d)(1)(i)(D) of this section.

The Secretary expects a third-party servicer to apply these provisions to existing contracts as well as to any new contracts that the servicer may enter. These provisions supersede provisions of existing contracts that the servicer may have with outside entities.

Changes: Paragraph (d)(1)(i)(D) of this section is revised so that a third-party servicer violates its fiduciary duty in instances where the servicer uses or contracts with, in a capacity that involves the administration of any aspect of the Title IV, HEA programs, any other person, agency, or organization that has been or whose officers or employees have been convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or other material violation of law with respect to those funds.

Comments: One commenter suggested that paragraph (d)(1)(i)(B) of this section should be amended to exclude those instances in which the funds that were fraudulently or criminally obtained or spent were repaid. The same commenter believed that this provision is too broad in scope, and should be restricted only to crime and fraud involving funds covered by the contract between the institution and the servicer.

Discussion: The Secretary disagrees with the commenter. A person that has been convicted of, pled guilty to, or has been determined to have engaged in criminal misconduct or fraud with respect to government funds poses a danger to the Title IV, HEA programs and the funds appropriated for use by those programs. Such a person has violated the public trust by misusing public funds. The Secretary does not believe that payment of restitution by that person is sufficient to guarantee that the person will not repeat the offense.

Changes: None.

Comments: Several commenters thought that the requirements in paragraph (d)(2) of this section were unreasonable by specifying that an institution or third-party servicer would violate its fiduciary responsibility if the servicer or a principal or affiliate of the servicer violated any Title IV, HEA program requirement. The commenters thought that the cure—to sever all ties with that servicer, or a principle or affiliate of that servicer, or to remove all responsibilities of administration of the Title IV, HEA programs—was too punitive in its scope.

Discussion: The Secretary agrees with those commenters. An institution or third-party servicer should not be considered to have automatically violated its fiduciary responsibility if the servicer or a principal or affiliate of that servicer violates a Title IV, HEA program requirement. The Secretary has recourse to apply the appropriate sanctions in this subpart against an institution or third-party servicer if the servicer or a principal or affiliate of the servicer commits a violation of any Title IV, HEA program requirement.

Changes: The Secretary removes the provisions of paragraph (d)(2) of this section.

Section 668.83 Emergency Action

Comments: Three commenters stated that no emergency action should be taken until the servicer has been given the opportunity to defend its actions. One of these commenters remarked that the Secretary could be subject to lawsuit if the servicer were proved innocent. Two commenters voiced concern that emergency actions could have a severe impact on an institution or servicer without a promulgation of evidence. One of these commenters suggested that the language be revised to read, "Receives verifiable information, determined by the official to be reliable * * *." Four commenters felt that emergency action should only be taken when the errors are intentional or the servicer or institution refuses to take corrective action. One commenter felt that due process mandates that the burden of proof be on the Secretary to show cause why an emergency action is necessary, and that the burden should shift only after the Secretary has made a prima facie case. Several commenters stated that an emergency action against a third-party servicer should not, as a matter of law, prohibit the servicer from engaging in the administration of any aspect of an institution's participation in the Title IV, HEA programs, but should only be limited to that aspect where emergency action is absolutely necessitated. The commenters felt this was necessary to provide a smooth turnover of servicing responsibilities rather than a sudden halt which could cause chaos, confusion and loss throughout the industry, including the Department of Education, the institution, and the borrower.

Discussion: The HEA specifies that the Secretary shall take an emergency action against a third-party servicer if the Secretary receives information, determined by the Secretary to be reliable, that a third-party servicer under contract with an eligible institution is violating any statutory or regulatory provision applicable to Title IV of the HEA, or any applicable special arrangement, agreement, or limitation and the Secretary determines that immediate action is necessary to prevent the misuse of Federal funds and the likelihood of loss outweighs the importance of waiting for the final outcome of a limitation, suspension, or termination action against the servicer. An emergency action is effective on the date that a notice and statement of the basis of the emergency action is mailed to the third-party servicer. If a third-

party servicer does not think that such action is warranted, the servicer may request a prompt show-cause hearing. As to the concerns expressed over possible disruption, the Secretary will tailor emergency actions as he determines necessary to protect federal interests. The Secretary also refers the reader to the discussions of emergency actions with respect to institutions in the regulations published on March 10, 1993 (58 FR 13336).

Changes: None.

Sections 668.84 Fine Proceedings, 668.85 Suspension Proceedings, and 668.86 Limitation or Termination Proceedings

Comments: A few commenters felt that proposed §§ 668.84 (governing fine proceedings), 668.85 (governing suspension proceedings), and 668.86 (governing limitation and termination proceedings) violate due process and privacy rights by requiring that a third-party servicer apprise all clients of proposed actions. The commenters thought that notification at that time is at a minimum premature if not inappropriate and would serve to create adversarial relations between parties that should have a cooperative working relationship. Several commenters felt that fines should be imposed only if the violation was "willful" or "knowing." Another commenter felt that notification of a fine proceeding against a third-party servicer should not be sent until the appeal process is completed because it could damage a third-party servicer's reputation among unaffected parties and could unnecessarily alarm the servicer's client base. One commenter recommended that the notice be limited to affected clients and suggested that if the Secretary does not want to eliminate the notice at the beginning of a fine proceeding, the Secretary should be required to send a notice when the decision to fine has been reversed.

Discussion: Quite the contrary to the commenters' views that notification to a third-party servicer's clients at the initiation of a fine or other proceeding against the servicer violates due process, this provision protects those rights. The potential consequences to an institution if the institution's agent violates a Title IV, HEA requirement can be severe, covering the full range of sanctions under this subpart. Thus, notice to an institution allows the institution the opportunity to participate in the process on behalf of its agent and in its own defense.

In addition, a sanction imposed against the servicer could have an adverse effect on the participation of an institution that contracts with the servicer, including the severing or limiting of the contractual relationship. Early notice to affected institutions permits them to judge the potential effect of the action on their participation and to prepare accordingly. As the Secretary noted in the NPRM, early notice also allows an institution to take corrective action before the conclusion of a proceeding under this subpart. The Secretary also corrects here two misunderstandings of these commenters: it is the designated department official, not the third-party servicer, who provides notice under this subpart; and the designated department official notifies only those institutions affected by the servicer's violations, not all institutions that contract with the servicer.

The Secretary is sensitive to those who were concerned about how notification in the initiation of a fine proceeding could affect a third-party servicer's reputation, but notes that information about actions the Secretary takes with regard to violations of Title IV, HEA program requirements is publicly available and is required by section 494C of the HEA to be shared at least with SPREs and by 34 CFR part 603 with accrediting agencies. The Secretary has provided, in § 668.90, for notification to all affected institutions that contract with a third-party servicer of the Secretary's final decision with regard to appeals under this subpart.

In determining whether to impose a fine, the amount of a fine, or whether to impose any other sanction for a violation of a Title IV, HEA program requirement, the Secretary always considers the extent to which the violation was deliberate. The Secretary does not consider it necessary to specify that consideration in these regulations.

Changes: None.

Comments: Several commenters suggested that in the case of a proceeding against an institution, the Secretary should notify the third-party servicers that contract with that institution, because the functions performed by certain third-party servicers could continue to be performed inadvertently when, in fact, the Secretary has limited, suspended, or terminated those activities. The commenters further recommended that in the case of a suspension, limitation, or termination against an institution the Secretary inform each third-party servicer that contracts with the institution of the consequences of the action to the servicer. The commenters also request parallel notification provisions concerning hearings and the submission of written material in the absence of a hearing.

Discussion: The Secretary expects an institution to provide immediate notice as necessary to its employees, agents and third-party servicers to comply with the terms of any action taken by the Department. The Secretary notes that he does not hold a third-party servicer responsible for violations of Title IV, HEA program requirements committed solely by an institution. Therefore, the Secretary does not consider it necessary to establish provisions for the notification separately to third-party servicers in every case.

Changes: None.

Comments: Two commenters strongly objected to the proposal to include, as a specific basis for any of these proceedings against an institution or a third-party servicer, a substantial misrepresentation of the institution's educational program, financial charges, or employability of the institution's graduates by an institution or servicer under contract with an institution, as applicable. The commenters felt that this proposal would require a third-party servicer to monitor a client institution's marketing of its educational program, its admissions process and the appropriateness of the financial charges as well as the statements made, verbal or written, regarding the employability of the institution's graduates. One commenter suggested that the application of this provision be limited to third-party servicers that provide services such as marketing for institutions. One commenter suggested that misrepresentation of eligibility of a location be added to the violations subject to the imposition of a fine.

Discussion: These provisions, with respect to third-party servicers, are aimed at just such servicers as those mentioned by one of the commenters—those that provide marketing or other services designed to represent an institution to prospective students and the public. However, the provisions can apply equally to any other third-party servicer that, in the conduct of its activities under a contract with an institution, deliberately misrepresents the nature of the institution's educational program or other relevant information. These provisions do not require a third-party servicer to take any special steps to monitor an institution's activities. The servicer being an agent of the institution is expected simply to avoid misrepresenting the institution. Subpart F of this part describes what constitutes misrepresentation. Misrepresentation of the eligibility of an institution's educational program clearly falls within the meaning of the term under subpart F and further may constitute fraud under the provisions of

§ 668.83, providing a potential basis for an emergency action. In the February 17, 1994, NPRM, the Secretary emphasized the seriousness with which he regards misrepresentation and the potential danger that misrepresentation poses to the Title IV, HEA programs. Commenters have not persuaded the Secretary to modify that view.

Changes: None.

Comments: One commenter felt that the Secretary should not pursue action against a contracting institution until the matter with the third-party servicer is resolved and also requested that the Secretary not fine both the servicer and the institution for the same occurrence. The commenter recommended that the proposed effective date of the suspension, limitation, or termination, which is at least 20 days after the mailing of the notice of intent, be revised to either 30 calendar days or 20 business days to allow sufficient time for preparation of a response. A commenter suggested that a fine be imposed only for material violations of Title IV, HEA program requirements.

Discussion: The Secretary reserves the right to initiate an action against an institution at any point at which the Secretary determines that the action is necessary. The protection of the Title IV, HEA programs requires this flexibility. Whether to impose fines on both an institution and a third-party servicer, and the amount of those fines, for the same occurrence depends on the degree to which each party caused or is otherwise responsible for the violation.

The Secretary considers 20 days generally to be sufficient time for the notified party to prepare a response. The Secretary notes, however, that this provision establishes a minimum time frame. The Secretary may allow additional time if the Secretary determines that the circumstances of the proceeding require more.

The Secretary does not consider it advisable to restrict the imposition of fines to material violations of Title IV, HEA program requirements. However, § 668.92 describes generally the factors that the Secretary may consider in determining the amount of a fine.

Changes: None.

Sections 668.87 Prehearing Conference, 668.88 Hearing, 668.89 Authority and Responsibilities of the Hearing Official, 668.90 Initial and Final Decisions—Appeals, and 668.91 Filing of Requests for Hearings and Appeals; Confirmation of Mailing and Receipt Dates

Comments: Several commenters questioned the absence of criteria in the regulations for the qualification of the hearing officer. The commenters also suggested that procedures should be established to allow for the participants to inform the hearing officer of details of the issues given the generally complex issues involved in most cases. The commenters recommended that the Secretary be required to provide a copy of the transcript described in § 668.88(d) to all parties within ten days of the hearing. Several commenters felt that any decision should be governed by a "reasonableness" standard to limit the liabilities of parties participating or providing servicing of the Title IV, HEA programs in good faith. The commenters thought that the process should allow for extenuating circumstances and that the hearing official should have the authority to interpret regulations and to rule them inapplicable. Another commenter believed that the hearing official should be bound by not only all applicable statutes and regulations but also other guidance deemed to be in effect by the Secretary to ensure that "Dear Colleague" letters and other written guidance from the Department of Education be included. One commenter believed that any prehearing conference with a third-party servicer should include any institution that has a contract with that servicer and who could potentially be affected by the Secretary's action. One commenter suggested that § 668.89 be modified to require that the hearing official be bound not only by "all applicable statutes and regulations" but also by all applicable judicial precedent, the Constitution, Federal statutes of general applicability, including the United States Bankruptcy Code.

One commenter questioned the statement that if the hearing officer finds that a termination is warranted, the Secretary affirms that decision asking if the Secretary intends to automatically affirm the hearing official's decision. A few commenters suggested that an institution or third-party servicer should be able to introduce new evidence on appeal noting that the Secretary should have the opportunity to have complete information that may not have been presented at the original fact-finding sessions. These commenters thought that the emphasis in resolving the issue should be on arriving at the most fair and most logical conclusion as opposed to conforming to a stringent pattern or process. One commenter felt that the Secretary should not have a special process for fraud investigations and there should not be limitations placed on a hearing official's ability to act. The commenter believed that the proposed procedures would unfairly limit the due process procedures available to participants in the system and that the current procedures do not require further modification.

Discussion: The Secretary has considered the suggestions from the commenters that some minimum standards be set out in the regulations to establish qualifications for the hearing officer, but does not believe that any such actions are appropriate. The hearing official is charged with the responsibility of resolving the issues requested in the appeal, and the parties bear the responsibility of presenting the issues in controversy. The hearing official meets requirements for experience and capability in accordance with internal Department procedures, and no additional requirements are needed in these regulations. Additionally, the hearing official's decisions involving limitations, suspensions, terminations and fines may be appealed to the Secretary under this subpart. This appeal to the Secretary provides an additional procedural safeguard that the issue will be resolved fairly in a manner that is consistent with other decisions issued by the Secretary.

The Secretary does not agree with the suggestion that additional regulations are necessary to permit the participants to inform the hearing officer of details of the issues due to the generally complex issues involved in some cases. Under the regulations, any party may request a prehearing conference that would address how the parties could present the relevant issues to the hearing official. In addition, the parties have the opportunity to make their position known in the pleadings required by the hearing official.

The Secretary agrees with the commenters that an institution or third-party servicer who is the respondent in an administrative hearing should be provided with a copy of a transcript when one is prepared by the Department of Education. Under current procedures, a transcription is routinely made of any adverse action initiated under this subpart, and a copy of the transcript is provided to the respondent.

The Secretary disagrees with the suggestion that the regulations establish a "reasonableness" standard to limit the liabilities of parties participating or providing servicing of the Title IV, HEA programs in good faith. Institutions and third-party servicers are fiduciaries that are entrusted with properly administering the Title IV, HEA programs. Establishing a lesser negligence is inappropriate, particularly given the advance system of Title IV,

HEA funding used by the overwhelming majority of participating institutions. As fiduciaries, these parties are held to one of the highest standards of accountability, and it is inappropriate to excuse or reduce a liability that is caused by a subjective good faith belief purportedly held by the institution or third-party servicer. Business decisions that concern the degree of care and oversight required by institutions and third-party servicers must take into consideration their responsibility for adhering to the applicable program requirements.

The Secretary also rejects any suggestion that the hearing official be given discretion to refuse to apply applicable regulations to a dispute. The regulations constitute final determinations by the Secretary concerning the requirements that must be followed by institutions and third-party servicers to participate in the HEA programs. The hearing official must apply the regulations as written. This process provides certainty to all parties, and enables the development and enforcement of a consistent body of administrative rulings.

The Secretary appreciates the suggestion of commenters who urged that guidance issued by the Department in the form of manuals, handbooks, other publications or Dear Colleague letters should be binding the hearing official in the same manner as regulations. However, such guidance does not have the same legal force as regulations issued pursuant to formal rulemaking. The Secretary believes that such guidance does provide a foundation against which the reasonableness of the institution's or third-party servicer's conduct may be judged. In the context of resolving whether the institution or third-party servicer violated a regulation or statute, or breached its fiduciary duties, the hearing official should evaluate the institution's or third-party servicer's actions based upon whether it made a good faith effort to apply and follow the guidance issued by the Department. The Secretary believes that actions taken contrary to such guidance would be presumptively improper and should be viewed as such by a hearing official. The Secretary further believes it will be a rare instance where a party can demonstrate that it fulfilled its fiduciary obligation and complied with statutory or regulatory requirements while failing to heed or apply guidance issued by the Department of Education as to the proper application of statutory or regulatory provisions.

The Secretary does not agree that it is necessary to list all possible authority binding on the hearing official. The parties are free to cite any authority they feel may govern a particular case or issue. Section 668.89(d) is included to preclude hearing official from ignoring or refusing to apply departmental statutes and regulations. If a hearing otherwise fails to apply applicable authority, a party may appeal to the Secretary.

The Secretary does not agree that an adverse action initiated against a third-party servicer must necessarily include any institution that has a contract with that servicer who could potentially be affected by the Secretary's action. The particular facts in each case will determine the party or parties against whom an adverse action is taken, and in some instances it may be appropriate for an institution and its servicer to both be named as respondents. In some cases, a third-party servicer against whom an adverse action is initiated may ask the Department to expand the administrative action to encompass the institutions that are relevant to the administrative action. Again, the Secretary believes that the particular facts of each case will have to be considered to determine the appropriate actions, rather than expanding the scope of the regulations to require such participation by other parties in every case.

The commenter also suggested that such participation by a third-party servicer's customers should be considered because an adverse ruling would have an impact on every other client for that servicer, especially where a termination or debarment action were sought. However, the resulting impact of a termination or a debarment of a third-party servicer on the servicer's customers is not a sufficient basis for these parties to be given a right to be represented in any prehearing conference. To invite all potentially affected parties to the hearing would complicate the proceedings. The proper focus of the administrative proceeding is determining whether the limitation, termination, or suspension should be imposed based upon the cited program violations.

The Secretary has modified the proposed regulation to provide that any initial decision by a hearing official that is appealed to the Secretary may be affirmed, reversed, remanded to the hearing official, or modified. The Secretary also notes that the regulations require a hearing official to uphold certain adverse actions when specific findings are made as set out in § 668.90. Although the Secretary reserves the discretion to review such rulings on appeal, these administrative decisions already reflect the Secretary's judgment that such action is appropriate under those facts, and modification of any such ruling will be rare.

The Secretary disagrees with the suggestion that an institution or third-party servicer should be able to introduce new evidence on appeal. The administrative process requires that the relevant information necessary for the decision will be presented to the hearing official within the time limits set out in the regulations. Any appeal to the Secretary must be based solely upon that information already in the administrative record and upon items which may be judicially noticed. Any subsequent opportunity to introduce new evidence on appeal would deprive the hearing official of the opportunity to have issued a decision based upon a complete record, and could discourage a respondent from placing its complete case before the hearing official at the appropriate time. This system of resolution is fairer and more efficient because it provides each party with an opportunity to have their complete case heard by a hearing official and then, where appropriate, have the initial decision reviewed by the Secretary on appeal.

The Secretary believes that it is appropriate to include fraud as a finding in § 668.90 for which an adverse action must be upheld where the hearing official makes a determination that the underlying activity has occurred. This addition to the regulation reelects the Secretary's determination that any fraud committed by an institution or third-party servicer is serious enough to warrant the imposition of the adverse action sought. In such instances, and consistent with the other items that have been placed into this category in the past such as missed audit submissions, it is appropriate to limit the discretion of the hearing official in accordance with the Secretary's determination that this category of finding warrants the adverse action initiated by the designated Department official. Furthermore, the regulation provides certainty to all parties concerning the gravity of the underlying violation, while providing an institution or third-party servicer an opportunity to request an administrative appeal to a hearing official concerning whether the respondent committed fraud.

Changes: The regulations have been changed to provide that the Secretary may affirm, reverse, remand to the hearing official, or modify any initial decision that is appealed to the Secretary. Section 668.88 has also been amended to specify that no charge is made to provide one copy of the

transcript to the hearing to an institution or a third-party servicer.

Section 668.92 Fines

Comments: A number of commenters responded to the Secretary's request for comment and agreed that repeated mechanical systemic unintentional errors should be treated as a single violation for purposes of assessing a fine against a third-party servicer. However, one commenter argued that total compensation for the value of the error should be expected. Another commenter suggested that the Secretary should address cases in which the third-party servicer deliberately failed to implement a regulation or failed to institute programming corrections relating to previously cited findings identified by an auditor, client, or the Secretary. The commenter believes that in these situations the fines should be significant based upon the risk of loss due to the servicer's negligence.

Several commenters felt that it would be inappropriate to adjust the amount of a fine simply based upon the size of the institution or servicer, claiming that a small organization should not benefit and a large organization should not be penalized solely on their size. One commenter suggested that the purpose of considering the size of the servicer's business was to take into consideration the dollar value of the violation in comparison to the overall value of the contracts being serviced by the servicer and suggested that language be added concerning the assessment of materiality of the violation. A few commenters supported a position that the determination of the size of any fine take into account the extensiveness and gravity of the violation and should be assessed in direct correlation to any loss of funds. The commenters also felt that the fines should only be assessed against the party who was directly responsible for the violation and supported the provision that the servicer may provide evidence that the institution contributed to the violation.

One commenter felt that any references to special arrangements should be deleted and noted that performing any statutory and regulatory requirement should cover all applicable situations.

Discussion: The Secretary agrees with the commenter who suggested that, in determining the amount of the fine to be assessed against a third-party servicer for a violation of a Title IV, HEA program requirement, a repeated mechanical systemic unintentional error need not be counted as a single violation if the servicer had been previously cited for this type of error and had failed to implement corrections. With respect to the commenter who suggested that in determining the amount of a fine with respect to a repeated mechanical systemic unintentional error, that the amount of the fine should at least be equal to the total value caused by the error, the Secretary does not agree with that comment. However, the Secretary does agree that the determination of the amount of the fine should take into consideration the amount of Title IV, HEA program funds that were lost due to the error.

With respect to the concerns expressed about the relationship of the amount of a fine to the size of an institution or of a third-party servicer's business, the Secretary points out that the size of an institution or business has a bearing on whether the institution or servicer has overextended its capability of properly administering the Title IV, HEA programs and the extent to which harm has been done to the programs.

With respect to the commenter who thought that the phrase special arrangement should be deleted from this section, the Secretary does not agree with that commenter. Special arrangements are based on individual circumstance and therefore should be taken into consideration. However, as noted elsewhere in the comments and discussion section, the Secretary clarifies special arrangements to refer to those special arrangements entered into under the authority of statutes applicable to Title IV of the HEA.

Changes: Paragraph (a)(5) is revised to specify that as one of the criteria in determining the extent to which violations are caused by a repeated mechanical systemic unintentional error, the total number of violations is considered to be a single violation, provided the third-party servicer has not previously been cited for this type of error and had failed to make the appropriate corrections to the system where the violation originated. In determining the amount of a fine, the Secretary also takes into consideration, as applicable, the financial loss to the Title IV, HEA programs that was attributable to the repeated mechanical systemic unintentional error.

Section 668.94 Termination

Comments: One commenter recommended that the regulations be amended to terminate the eligibility to perform some but not all of the services provided by the third-party servicer, claiming that some functions provided by the servicer may continue to meet the applicable requirements of the program. This change would recognize that a third-party servicer may provide multiple and unrelated functions under the Title IV, HEA programs. Many commenters expressed concern about the provision in § 668.94(c) requiring the servicer to return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution. One commenter suggested that since the institution may contract with another servicing entity, the records should be passed to the new servicer as specified by the institution. Many commenters pointed out that the records maintained by the third-party servicer appear on microfiche, imaging disc, microfilm, or in paper form and the servicer will be able to provide copies of suoh records but not the original records. One commenter suggested an expansion to require the servicer to return servicer notes, related documents, records or copies of such notes, related documents and records that pertain to the servicer's administration of the program on behalf of the institution. The commenter further suggested that the servicer certify copies as exact copies whenever required by law. The commenter also suggested that a sentence be added to protect the proprietary rights of the servicer to data base media, servicing procedures, computer programs, software packages, servicer forms, and other proprietary information, procedures and materials. Another commenter noted that copies of records for a single institution's loans may be commingled with records pertaining to other institutions and suggested that servicers should be permitted to provide records upon request rather than all at once.

Discussion: The Secretary agrees with the commenters that it may be appropriate to terminate the eligibility of a third-party servicer to perform some but not all of the activities under certain circumstances. In other situations, however, a violation may be so egregious that complete termination from being able to administer any aspect of the institution's participation is appropriate. The Secretary believes that the regulations provide the needed flexibility to determine the correct action to be taken.

Records relating to a third-party servicer's administration of any aspect of an institution's participation in the Title IV, HEA programs are the institution's property. A third-party servicer may make copies of the original records that it provides to an institution if the contract between the servicer and institution is terminated. See the discussion in § 668.25 on records.

The Secretary does not agree that the regulations need to be expanded to cover servicer notes, related documents, records, or copies of such notes; that is a matter between the institution and the servicer. The Secretary does not believe that it is necessary to add regulatory language to protect the proprietary rights of the servicer since adequate protection already exists through copyright laws to serve this purpose.

Changes: None.

Section 668.95 Reimbursements, Refunds, and Offsets

Comments: Several commenters recommended that the reference to third-party servicer in § 668.95(c) be removed because the servicer generally makes no claims for benefits on its own behalf therefore funds would not be available to be offset. Another commenter noted that if the Secretary is transmitting funds directly to a third-party servicer on behalf of institutions, the funds are for multiple institutions and to offset an unaffected institution's funds would not be reasonable or fair. One commenter requested that the provision in paragraph (b)(1)(ii) of this section that would have the servicer or institution repay any discounts, premiums, or excess interest paid under 34 CFR part 682 be eliminated stating that the payment of premiums and discounts are contract issues between two lenders in the FFEL programs and should not be assessed to other parties or repaid to the Secretary.

Discussion: The Secretary disagrees with those commenters who recommended removing reference to a third-party servicer from the provision governing the ability of the Secretary to offset any benefits or claims due to an institution or third-party servicer against any payment that an institution or third-party servicer may owe to the Secretary. A situation may arise where a third-party servicer makes a claim against the Department of Education for funds owed to the servicer and the Secretary wants to offset that claim because the servicer has not repaid a liability owed the Department of Education for a violation of the Title IV, HEA program requirement.

The Secretary also does not accept the comment that paragraph (b)(1)(ii) of this section should be removed. This provision is particularly relevant to an institution's participation in the FFEL programs.

Changes: None.

Subpart H—Appeal procedures for Audit Determinations and Program Review Determinations

Section 668.114 Notification of Hearing

Comments: Several commenters suggested that with respect to a third-party servicer's request for review, the hearing official only notify the institutions to whom the findings were originally disclosed since a third-party servicer may have added new clients during the period between the publication of the findings and the announcement of the hearing and the new clients would not be aware of the findings and could be confused by the notice of the hearing. Another commenter felt only institutions that contract with the servicer of the affected functions should be notified.

Discussion: The Secretary agrees that subsequent notices from the hearing official should be sent only to the actual parties to the proceeding. In the cases of institutions receiving similar services to those at issue in the proceeding, they need not be notified. As discussed above, the need for notice to other affected institutions is satisfied with notice of the final determination. Therefore, there is no need to impose the burden on the hearing official of providing notice to every institution with which a third-party servicer contracts.

Changes: Section 668.114(b) is revised to require notice only to the actual parties to the proceeding.

Section 668.116 Hearing

Comments: Several commenters recommended that an institution or third-party servicer also have the burden of proving that the findings are not substantial in nature. The commenters felt that some findings or alleged violations may be irrefutable, but their effect may be strictly limited, posing immaterial impact on the integrity of the servicer's or lender's portfolio. One commenter felt that a third-party servicer should only have the burden of proving that the "expenditures questioned or disallowed were proper" to the extent that the servicer contracts with the institution for cash management of Title IV, HEA program funds and that the Secretary should not question servicing fee income since it is not considered Title. IV HEA program funds. A few commenters suggested deleting references to the time frames within which an institution must have provided documentation previously stating that any legitimate documentation regarding the subject at issue should be admissible and the time frames within which it was previously submitted are irrelevant to their authenticity or material relationship to the case. Several commenters felt that the transcribed records of the proceeding should only be made available to the hearing participants and not to any institution that contracts with the servicer.

Discussion: With respect to the suggestion that an institution or third-party servicer need only prove that findings are "not substantial," the Secretary disagrees that the standard for accountability for Federal funds should be relaxed. An institution, or its third-party servicer, is a fiduciary and duty bound to use the highest standard of care and diligence at all times in the administration of the Title IV HEA programs. The suggested language would weaken this standard. If, as suggested by the commenters, a violation truly has an immaterial impact, then there will no significant liabilities assessed.

The commenter who felt that a third-party servicer should not have to justify expenditure of its fee income is correct. Section 668.116(d) only requires proof that Title IV HEA program funds were properly expended.

With respect to the comments on altering the time periods for submission of documentation by institutions, the Secretary notes that the purpose of this rulemaking it to make existing regulations applicable to third-party servicers and not to extensively modify the hearing procedures. The Secretary believes that the present procedures are consistent with an institution's record-keeping and fiduciary obligations; institution's complying with these obligations should have, and have had. no difficulty in meeting established deadlines. Further, requiring submission of documentation with a request for review allows cases to be resolved without hearing.

With respect to the comment that hearing transcripts need only be provided to the hearing participants, the Secretary agrees. Further since the records of these proceedings are generally available under the Freedom of Information Act, the Secretary agrees that reference to availability under that act is unnecessary. Those who are not parties to the proceedings can request the transcript pursuant to that act, subject to any applicable exceptions to release of the requested information.

Changes: Section 668.116(g)(2) is revise to require that the hearing transcript be sent only to the parties to the proceeding and eliminate the

reference to the Freedom of Information Act.

Part 682—Federal Family Education Loan Programs

Subpart D—Guaranty Agency Programs

Section 682.401 Basic Program Agreement

Comments: Several commenters suggested that the provision in this section relating to contract submissions be modified so that a third-party servicer would not be required to submit a copy of its contract to the Secretary unless so requested by the Secretary.

Discussion: The Secretary understands the commenters concerns that the copy of a third-party servicer's contract with a guaranty agency contains proprietary information that the servicer does not wish to be made public. Many of the commenters were concerned that a copy of a third-party servicer's contract would be released under the Freedom of Information Act (FOIA). The Secretary wishes to assure third-party servicers that trade secrets and confidential commercial or financial information is not releasable under FOIA. Parties concerned over possible release should, however, take appropriate precautions by marking submitted contracts as confidential. This provision is intended only to facilitate oversight and make the Secretary aware of all the services the third-party servicer has contracted to provide. Although many commenters believed that a third-party servicer could accomplish this by summarizing the services it has contracted to provide. In order to verify this information, the Secretary would need a copy of the actual contract. Therefore, the Secretary has decided to retain this requirement in the final rule.

Changes: None.

Section 682.413 Remedial Actions

Comments: Several commenters objected to a third-party servicer being held jointly and severally liable for any interest benefits and special allowance its client received on its FFELP loan portfolio when the servicer may not have been responsible for billing the Department for such monies. Some commenters believed that clarification to this provision is necessary to ensure that a third-party servicer is not held jointly or severally liable for any violations which it did not commit.

Discussion: The Secretary agrees with the commenters that a third-party servicer should not be held responsible for any program violations it did not commit. The regulations do not hold a third-party servicer jointly or severally liable for any interest benefits or special allowance received by a lender for which the lender was not eligible if that servicer complied with program regulations. However, a third-party servicer that is not responsible for billing the Department for interest benefits and special allowance may be responsible for the lender receiving interest benefits and special allowance for which the lender is not eligible because the servicer has violated other program requirements. The Secretary believes that a third-party servicer should be responsible for its actions and that holding a third-party servicer potentially liable for Federal monies expended because it has committed program violations helps accomplish this. The Secretary also believes that holding lenders and servicers jointly and severally liable is the best way to protect the Federal fiscal interest. See prior discussion on this issue under § 668.25 and in the February 17, 1994 NPRM.

The Secretary is sensitive that this provision makes a significant change in how responsibility for liabilities may be covered in contracts that servicers enter with lenders. Therefore, the Secretary has established an order in which he will attempt to collect such liabilities. The Secretary will first attempt to collect such liabilities from the lender and, if necessary, offset the lender's first future claim to the Secretary for interest benefits and special allowance for the amount of the liability. The Secretary believes that this is the most effective and efficient means to collect a liability and that he will be successful in collecting from the lender in most cases. However, the situation may arise when the Secretary is not able to collect these monies from a lender because the lender chooses not to submit further claims, discontinues its participation in the FFEL programs, or becomes insolvent and is taken over by banking regulators. Because such circumstances may arise, the Secretary retains the option of holding a third-party servicer jointly and severally liable with a lender for such liabilities. However, the Secretary intends to exercise his authority to collect a liability from a third-party servicer under this provision only when he is unable to collect such monies from the lender.

Changes: The Secretary has revised this provision so that the Secretary will not attempt to collect interest benefits or special allowance from a third-party servicer unless the Secretary is unable to collect from the lender with which the servicer has contracted.

Comments: Several commenters asked the Secretary to clarify this section to specify when the 30-day period begins that determines when a lender must repay or make satisfactory arrangements to repay a liability resulting from a third-party servicer's action before the Secretary will attempt to collect from the servicer. Several commenters also suggested that the Secretary should attempt to collect such monies by offsetting a lender's claim for interest benefits and special allowance.

Discussion: The Secretary agrees with the commenters that clarification is needed. The Secretary also agrees with the commenters that offsetting a lender's bill for interest benefits and special allowance for the amount of the liability may prove to be an effective means to collect the liability from the lender. The Secretary will exercise this option to collect such liabilities from a lender whenever he believes this method is in the best interests of the FFEL programs and the Federal fiscal interest.

Changes: The Secretary has amended this section to clarify that the lender must repay or make satisfactory arrangements to repay a liability within 30 days from the date the Secretary originally requests such repayment from the lender before the Secretary will attempt to collect from the third-party servicer.

Comments: Many commenters suggested that the liability of a third-party servicer acting as an agent for a guaranty agency be removed because the commenters believed that the servicer does not play a role under this provision that would subject it a liability.

Discussion: The Secretary does not agree with the commenters. A third-party servicer that is administering any aspect of a guaranty agency's FFEL programs may be responsible for the guaranty agency paying a claim that is not eligible for reinsurance. This situation may occur when the servicer is negligent in reviewing the history of the loans consolidated in a Federal Consolidation loan under 34 CFR 682.206(f) when a default claim is submitted that results in the agency subsequently receiving reinsurance on such a claim. This would result in a liability being created by the servicer's actions.

Changes: None.

Section 682.416 Requirements for Third-Party Servicers and Lenders Contracting With Third-Party Servicers

Standards for administrative capability.

Comments: Many commenters suggested that the Secretary qualify the term business systems so that it was

clear that such systems included combined automatic and manual systems. The commenters believed that this term, without qualification, implied only computer-supported systems.

Discussion: The Secretary agrees with the commenters that it is appropriate to qualify the term "business systems."

Changes: The Secretary has amended this provision to clarify that business systems include combined automated and manual systems.

Standards of financial responsibility. Comments: Many commenters believed that the financial standards the Secretary was proposing for an institution should not be used for third-party servicers because a third-party servicer in the FFEL programs has different financial obligations and responsibilities than an institution. Many commenters believed that any requirements related exclusively to functions that are not required by FFEL programs servicers should be deleted, such as deferred tuition accounts.

Discussion: The Secretary agrees with the commenters in that a third-party servicer should not be held responsible for meeting financial standards that are unrelated to the functions which it is not responsible to perform. The Secretary does not intend to require a third-party servicer that is administering aspects of the FFEL programs on behalf of a lender or guaranty agency to be required to meet financial standards with respect to items that are unrelated its contractual obligations with the lender or guaranty agency. The Secretary does not agree with the commenters that a third-party servicer should not otherwise meet financial standards that are similar to those an institution is required to meet. The Secretary believes that it was the intent of Congress to ensure that the FFEL programs are protected from any risk that may involve the servicer's financial status, persons responsible for administering or controlling the servicer, or the servicer's performance. Therefore, the Secretary has decided to require a third-party servicer to meet the standards for financial responsibility similar to those required of institutions of higher education.

Changes: The Secretary has clarified the regulations so that only the provisions of 34 CFR 668.15(b) (1) through (4) and (6) through (9) will apply to a third-party servicer under this part.

Past performance of third-party servicer or persons affiliated with servicer. Comments: Many commenters believed that these provisions are too inclusive and should only include corporate officers of only those third-party servicers handling Federal funds. Other commenters believed that the Secretary should qualify this restriction with respect to entities with which a third-party servicer contracts. The commenters suggested that only persons, entities, or officers or employees of an entity with which a third-party servicer contracts that act in a capacity that involves the administration of Title IV, HEA program funds should cause the servicer to not be considered financially responsible.

Discussion: The Secretary believes that a third-party servicer that has persons affiliated with it that have been convicted of or pled *nolo contendere* to the crimes described in these sections presents an unreasonable risk to the integrity of the FFEL programs and places Federal monies at risk. However, the Secretary believes that such risk is evident only when a person or entity acts in a capacity that involves the administration of Title IV, HEA program funds.

Changes: The Secretary has amended this provision to clarify that a third-party servicer that contracts with an outside entity will not be considered financially responsible if any person, entity, or officer or employee of such entity acts in a capacity that involves the administration of Title IV, HEA program funds.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the FFEL Program and the PLUS Program

Section 682.701 Definitions and Terms Used in This Subpart

Comments: Many commenters suggested that a suspension of a third-party servicer should only apply to that servicer's ability to enter into new contracts with Title IV, HEA program participants.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that when the servicer's actions are serious enough to warrant suspending that servicer, it presents an unreasonable risk to Federal monies to allow that servicer to continue to perform FFEL programs functions for any Title IV, HEA program participant for the duration of the suspension.

Changes: None.

Section 682.704 Emergency Action

Comments: Many commenters suggested that an emergency action should become effective after a period of time has elapsed after the third-party servicer receives notification from the Department that it intends to take such action.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that an emergency action should be taken when continued participation of an entity in the FFEL programs seriously jeopardizes the integrity of the FFEL programs and puts Federal funds at risk. The Secretary believes that such action should be taken immediately when the behavior of the entity justifies taking such action.

Changes: None.

PART 690—FEDERAL PELL GRANT PROGRAM

Section 690.83 Submission of Reports

Comments: Four commenters believed that § 690.83(e) of the proposed regulations does not comply with the statute because, in implementing section 487(c)(7) of the HEA, it places undue restrictions on an institution seeking additional funds which the institution would have been eligible to receive if it had met Federal Pell Grant Program reporting deadlines. One commenter stated that the Secretary had unduly limited the scope of section 487(c)(7) of the HEA by making the provision of this section applicable only to funds received under the Federal Pell Grant Program.

Discussion: The Secretary believes that the proposed rule in § 690.83(e) is in accordance with the program statute. When an institution's auditor identifies underreported Federal Pell Grant expenditures beyond the normal reporting and reconciliation deadlines for the Federal Pell Grant Program, § 690.83(e) provides a mechanism for an institution to receive credit for having properly expended those funds. Congress intended that an institution have such a mechanism available. However, the Secretary does not believe that Congress intended for such accounting recaptures of properly expended funds to continue in perpetuity. In order for the Department to complete its own accounting for the Federal Pell Grant Program appropriations, institutions are expected to timely reconcile the expenditures throughout the award year, with a final accounting made on or before September 30. The procedures in § 690.83(e) will provide a further opportunity for an institution to seek credit for having properly expended these funds during a prior award year, but the Secretary believes it is appropriate to limit the circumstances and timing for receiving credit for such prior expenditures. Furthermore, § 690.83(e) is limited to the Federal Pell Grant Program because the auditing procedure permitted under § 690.83(e)

results in an adjustment to the institution's prior year funding authorization for the Federal Pell Grant Program. There is no corresponding capability to adjust prior year funding for the other Title IV, HEA programs.

Changes: None.

Paperwork Reduction Act of 1980

Comments: Several commenters disagreed with the Department's computation of the annual public reporting and recordkeeping burden contained in the regulations. Another commenter questioned whether the Department had complied with the requirements of the Paperwork Reduction Act and its implementing regulations in 5 CFR part 1320. This commenter also believed that students should be considered in computing the burden.

Discussion: The Department's computation of the annual public reporting and recordkeeping burden in the regulations is an estimate based on the best information available. The Department identified sections of the regulations containing information collection requirements in the preamble to the proposed regulations and complied with all applicable requirements of the Paperwork Reduction Act and its implementing regulations in 5 CFR part 1320. The Department appreciates the additional information provided by commenters regarding the estimated burden. To the extent that commenters identified specific regulatory provisions as imposing burdens or provided estimates of the amount of burden imposed, this information has been considered in developing the final regulations. The Department did not consider students in computing the estimated burden of the information collection requirements in the regulations because the regulations govern postsecondary institutions participating in the Title IV student financial assistance programs. If any burden is imposed on students, it is indirect and not subject to computation under the Paperwork Reduction Act. As a result of the comments and revisions to the regulations, the Department is modifying the burden estimates. The total annual reporting and recordkeeping burden that would result from the collection of the information is 123,485 burden hours for the package.

Changes: None.

Regulatory Flexibility Act Certification

Comments: In the NPRMs, the Secretary certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. Several commenters suggested that this statement was erroneous and that these rules will definitely have a significant impact on institutions, especially the smaller ones that are not computerized.

Discussion: The Secretary recognizes that the regulations will have an impact on small institutions. However, based on Department estimates of the impact, the Secretary does not believe that the impact will be disproportionately or economically significant. The Secretary therefore reaffirms his certification that the regulations would not have a significant economic impact or a substantial significant economic impact on a substantial number of small entities. To the extent that commenters are able to provide additional information on the economic impact of the regulations, the Secretary invites the commenters to submit this information so that it may be considered in reviewing the regulations to reduce regulatory burden.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRMs that were published on February 17 and February 28, 1994, respectively.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal government in the exercise of their governmental functions.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. The Secretary will consider any comments received within the designated comment period in determining whether to make any changes in these rules. After reviewing any comments received during the comment period, the Secretary will publish changes to the regulations or will publish a notice in the **Federal Register** indicating that no further changes will be made.

Paperwork Reduction Act of 1980

Sections 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities that participate in the programs authorized under Title IV of the HEA: Individuals, States, large and small businesses, for-profit institutions or other for-profit organizations, non-profit institutions, and public institutions. The Department needs and uses the information to enable the Secretary to improve the monitoring and accountability of institutions and third-party servicers participating in the Title IV, HEA programs.

Annual public collecting, reporting, and recordkeeping burden for this collection of information is estimated to total 123,485 hours for 64,695 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These numbers represent aggregate totals. For further information contact the Department of Education contact person.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. Comments on this burden estimate should be submitted by May 31, 1994.

Assessment of Educational Impact

In the Notices of Proposes Rulemaking published on February 17 and February 28, 1994, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that

is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student Aid, Vocational education.

34 CFR Part 690

Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student Aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned)

Dated: April 20, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends Parts 668, 682, and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.1 is amended by revising paragraphs (a), (b)(2) and (3); removing paragraph (b)(4); and revising paragraph (c) to read as follows:

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) * * *

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

(1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR part 690);

(2) The National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21 *et seq.*; 34 CFR part 693);

(3) The Presidential Access Scholarship (PAS) Program (20 U.S.C. 1070a–31 *et seq.*; 34 CFR part 691);

(4) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR part 676);

(5) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR part 692);

(6) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.*; 34 CFR part 682);

(7) The Federal Supplemental Loans for Students (Federal SLS) Program (20 U.S.C. 1078–1; 34 CFR part 682);

(8) The Federal PLUS Program (20 U.S.C. 1078–2; 34 CFR part 682);

(9) The Federal Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR part 682);

(10) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR part 675);

(11) The Federal Direct Student Loan (FDSL) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685); and

(12) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*; 34 CFR part 674).

(Authority: 20 U.S.C. 1070 *et seq.*)

3. Section 668.2 is revised to read as follows:

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Award year
Branch campus
Clock hour
Correspondence course
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Incarcerated student
Institution of higher education
Legally authorized
Nationally recognized accrediting agency
Nonprofit institution
One-year training program
Postsecondary vocational institution
Preaccredited
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Recognized occupation
Regular student
Secretary
State
Telecommunications course

(b) The following definitions apply to all Title IV, HEA programs:

Academic year: (1) A period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks (except as provided in § 668.3) of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester hours or 36 quarter hours in an educational program whose length is measured in credit hours; or

(ii) Nine hundred clock hours in an educational program whose length is measured in clock hours.

(2) For purposes of this definition—

(i) A week is a consecutive seven-day period;

(ii)(A) For an educational program using a semester, trimester, or quarter system or an educational program using clock hours, the Secretary considers a week of instructional time to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(B) For an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instructional time to be any week in which at least 5 days of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(iii) Instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(Authority: 20 U.S.C. 1088)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR part 674);

(2) The Federal Work-Study (FWS) Program (34 CFR part 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR part 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see *Independent student*).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct loan: A loan made under Title IV–E of the HEA after June 30, 1972, that does not satisfy the definition of "Federal Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Federal Consolidation Loan program: The loan program authorized by Title IV–B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for parent Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078–3)

Federal Direct PLUS loan: A Federal PLUS loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1078–2 and 1087a *et seq.*)

Federal Direct Stafford loan: A Federal Stafford loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.* and 1087a *et seq.*)

Federal Direct Student loan: A loan made under Title IV–D of the HEA after August 10, 1993.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Direct Student Loan (FDSL) program: The student loan program authorized on July 23, 1992, by Title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Pell Grant Program: The grant program authorized by Title IV–A–1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Federal Perkins Loan program: The student loan program authorized by Title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078–2)

Federal PLUS program: The loan program authorized by Title IV–B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(Authority: 20 U.S.C. 1078–2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078–1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Stafford Loan program: The loan program authorized by Title IV–B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Supplemental Educational Opportunity Grant (FSEOG) program: The grant program authorized by Title IV–A–2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Federal Supplemental Loans for Students (Federal SLS) program: The loan program (formerly called the ALAS Program) authorized by Title IV–B, section 428A, of the HEA that encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078–1)

Federal Work Study (FWS) program: The part-time employment program for students authorized by Title IV–C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

FFELP loan: A loan made under the FFEL programs.

(Authority: 20 U.S.C. 1071 *et seq.*)

Full-time student: An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) Twelve semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system.

(2) Twenty-four semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) Twenty-four clock hours per week for an educational program using clock hours.

(4) In an educational program using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

(i) For a program using a semester, trimester, or quarter system—

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(ii) For a program not using a semester, trimester, or quarter system—

$$\frac{\text{Number of semester or trimester hours per academic year}}{24} + \frac{\text{Number of quarter hours per academic year}}{36} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*)

Income Contingent Loan (ICL) program: The student loan program authorized by Title IV–D of the HEA prior to July 23, 1992.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under 34 CFR 668.83.

National Defense Student Loan program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) program: The student loan program authorized by Title IV–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

National Early Intervention Scholarship and Partnership (NEISP) program: The scholarship program authorized by Chapter 2 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–21 *et seq.*)

One-third of an academic year: A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

(Authority: 20 U.S.C. 1088)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

Payment period: (1) With respect to the Federal Pell Grant and PAS programs, a payment period as defined in 34 CFR 690.2 and 691.2;

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

Presidential Access Scholarship (PAS) program: The scholarship program authorized by Chapter 3 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–31 *et seq.*)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83.

State Student Incentive Grant (SSIG) program: The grant program authorized by Title IV–A–3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Third-party servicer: An individual or a State or private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(1) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to—

(i) Processing student financial aid applications;

(ii) Performing need analysis;

(iii) Determining student eligibility and related activities;

(iv) Certifying loan applications;

(v) Processing output documents for payment to students;

(vi) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(vii) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(viii) Preparing and certifying requests for advance or reimbursement funding;

(ix) Loan servicing and collection;

(x) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(xi) Preparing a Fiscal Operations Report and Application to Participate—FISAP;

(2) Exclude the following functions—

(i) Publishing ability-to-benefit tests;

(ii) Performing functions as a Multiple Data Entry Processor (MDE);

(iii) Financial and compliance auditing;

(iv) Mailing of documents prepared by the institution; and

(v) Warehousing of records; and

(3) Notwithstanding the exclusions referred to in paragraph (2) of this definition, include any activity comprised of any function described in paragraph (1) of this definition.

(Authority: 20 U.S.C. 1088)

Two-thirds of an academic year: A period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that

begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, two-thirds of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

(Authority: 20 U.S.C. 1088)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information report (valid ISIR): A valid institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

4. A new § 668.3 is added to part 668 to read as follows:

§ 668.3 Reductions in the length of an academic year.

(a) *General.* (1) An institution that provides at least a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree, respectively, may request the Secretary to reduce the minimum period of instructional time of the academic year for any of the institution's educational programs to not less than 26 weeks.

(2) The institution must submit its request to the Secretary in writing and must include in the request—

(i) Identification of each educational program for which the institution requests a reduction and the requested length of its academic year, in weeks of instructional time, for that educational program. The requested length for its academic year may not be less than 26 weeks of instructional time;

(ii) Information demonstrating that the institution satisfies the requirements of this section; and

(iii) Any other information that the Secretary may require to determine whether to grant the request.

(b) *Transition period for institutions participating in at least one Title IV, HEA program on the effective date of this section.* The Secretary grants, for a period not to exceed 2 years from the effective date of this section, the request of an institution participating in at least one Title IV, HEA program on the effective date of this section for a reduction in the minimum period of instructional time of the academic year if the institution—

(1) Satisfies the requirements of paragraph (a) of this section;

(2) Has an academic year of less than 30 weeks of instructional time on the effective date of these regulations;

(3) Demonstrates that the institution awards, disburses, and delivers, and has since July 23, 1992, awarded, disbursed, and delivered, Title IV, HEA program funds in accordance with the definition of academic year in section 481(d) of the HEA; and

(4) Demonstrates that the institution is in the process of changing to a minimum of a 30-week academic year.

(c) *Institutions in general.* (1) The Secretary may grant the request of any institution that satisfies the requirements of paragraph (a) of this section. In making this determination, the Secretary considers circumstances including, but not limited to:

(i) A demonstration to the satisfaction of the Secretary by the institution of unique circumstances that justify granting the request;

(ii) In the case of a participating institution, demonstration that the institution awards, disburses, and delivers, and has since July 23, 1992, awarded, disbursed, and delivered, Title IV, HEA program funds in accordance with the definition of academic year in section 481(d) of the HEA;

(iii) Approval of the institution's nationally recognized accrediting agency or State body that legally authorizes the institution to provide postsecondary education, including specific review and approval of the length of the academic year for each educational program offered at the institution; and

(iv) The number of hours of attendance and other coursework that a full-time student is required to complete in the academic year for each of the institution's educational programs.

(2) An institution that is granted a reduction in the minimum of 30 weeks of instructional time for an academic year in accordance with paragraph (c)(1) of this section and that wishes to continue to use a reduced number of weeks of instructional time must reapply to the Secretary for a reduction whenever the institution is required to apply to continue to participate in a Title IV, HEA program.

(Authority: 20 U.S.C. 1088)

5. Section 668.8 is revised to read as follows:

§ 668.8 Eligible program.

(a) *General.* An eligible program is an educational program that—

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

(b) *Definitions.* For purposes of this section—

(1) The Secretary considers the "equivalent of an associate degree" to be—

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program;

(2) A week is a consecutive seven-day period; and

(3)(i) For an educational program using a semester, trimester, or quarter system or an educational program using clock hours, the Secretary considers a week of instruction to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs; or

(ii) For an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instruction to be any week in which at least 5 days of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(4) Instruction does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(c) *Institution of higher education.* An eligible program provided by an institution of higher education must—

(1) Lead to an associate, bachelor's, professional, or graduate degree;

(2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or

(3) Be at least a one-academic-year training program that leads to a certificate, degree, or other recognized

educational credential and that prepares a student for gainful employment in a recognized occupation.

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree; or

(3) For purposes of the Federal Stafford Loan, Federal PLUS, and Federal SLS programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(f) *Calculation of completion rate.* An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner in accordance with § 668.22(i)(2), a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy.

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received within 150 percent of the published length of the educational program the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) *Calculation of placement rate.* (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Of the total obtained under paragraph (g)(1)(i) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed, or have been employed, for at least 13 weeks following receipt of the credential from the institution.

(iii) Divide the number of students determined under paragraph (g)(1)(ii) of this section by the total obtained under paragraph (g)(1)(i) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(ii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

(i) A written statement from the student's employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section, an educational program qualifies as an eligible program for purposes of the Federal Pell Grant or FSEOG Program only if the educational program is an undergraduate program.

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) *English as a second language (ESL).* (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely

of instruction in ESL qualifies as an eligible program if—

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall test each student at the end of the educational program to substantiate that the student has attained adequate proficiency in written and spoken English to use already existing knowledge, training, or skills. The institution shall identify the test or tests given to the students and the basis for the judgment that the student has attained the adequate proficiency.

(3) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(4) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, or a professional degree; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, or professional degree, provided that the institution's degree requires at least two academic years of study.

(l) *Formula.* For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs—

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 hours of instruction.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c–1070c–2, 1085, 1087aa–1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

6. Section 668.9 is revised to read as follows:

§ 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

In determining the amount of Title IV, HEA program assistance that a student who is enrolled in a program described in § 668.8(k) is eligible to receive, the institution shall apply the formula contained in § 668.8(l) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

7. Section 668.11 is revised to read as follows:

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

§§ 668.12–668.16 [Redesignated as §§ 668.14–668.18]

8. Sections 668.12 through 668.16 are redesignated as §§ 668.14 through 668.18, respectively.

9. A new § 668.12 is added to read as follows:

§ 668.12 Application procedures.

(a) *Applications for initial participation.* An institution that wishes to participate in a Title IV, HEA program must first apply to the Secretary for a certification that the institution meets the standards in this subpart.

(b) *Applications for continued participation.* A participating institution must apply to the Secretary for a certification that the institution continues to meet the standards in this subpart upon the request of the Secretary or if the institution wishes to—

(1) Continue to participate in a Title IV, HEA program beyond the scheduled expiration of the institution's current period of participation in the program;

(2) Include in the institution's participation in a Title IV, HEA program—

(i) A branch campus that is not currently included in the institution's participation in the program; or

(ii) Another location that is not currently included in the institution's participation in the program, if—

(A) That location offers 100 percent of an educational program; or

(B) The Secretary requires the institution to apply for certification under paragraph (c) of this section;

(3) Reestablish participation in a Title IV, HEA program following a change in ownership that results in a change in control according to the provisions of 34 CFR part 600.

(c) *Notification and application requirements for additional locations.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to—

(i) Include in its participation in a Title IV, HEA program a location that is not currently included in the institution's participation in the program and that offers at least 50 percent, but less than 100 percent, of an educational program; or

(ii) Continue to include in its participation in a Title IV, HEA program a location that—

(A) Offers at least 50 percent, but less than 100 percent, of an educational program; and

(B) Has changed its name, location, or address.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(3) The Secretary may require the institution to apply for a certification that the institution continues to meet the requirements of this subpart.

(d) *Notification and application requirements for changes in name, location, or address.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to continue to participate in a Title IV, HEA program following a change in

name, location, or address of the institution or continue to include in the institution's participation—

(i) A branch campus that has changed its name, location, or address; or

(ii) Another location that has changed its name, location, or address if that location offers 100 percent of an educational program.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(e) *Required forms and information.* An institution that applies for participation under paragraph (a) or (b) of this section must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to certify that the institution meets the standards of this subpart.

(Authority: 20 U.S.C. 1099c)

10. A new § 668.13 is added to read as follows:

§ 668.13 Certification procedures.

(a) *Requirements for certification.* The Secretary certifies that an institution meets the standards of this subpart only if—

(1) The institution is an eligible institution;

(2) The institution meets the standards of this subpart;

(3) Each branch campus to be included in the institution's participation meets the applicable standards of this subpart; and

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, in the case of an institution seeking to participate for the first time in the Federal Pell Grant Program, the campus-based programs, the FDSL Program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program, the institution requires the following individuals to complete Title IV, HEA program training provided or approved by the Secretary:

(A) The individual designated by the institution under § 668.16(b)(1).

(B)(*1*) In the case of a for-profit institution, the chief administrator of the institution; or

(*2*) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another administrative official of the institution designated by the chief administrator.

(ii) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(4)(i) of this section has previously completed Title IV, HEA program training provided or approved by the Secretary, the institution may elect to request an on-site Title IV, HEA program certification review by the Secretary instead of requiring that individual to complete again the Title IV, HEA program training provided or approved by the Secretary.

(iii) An institution may not begin participation in the applicable Title IV, HEA program or programs—

(A) In the case of an institution that requires individuals to complete training in accordance with paragraph (a)(4)(i) of this section, until the individuals complete the required training; or

(B) In the case of an institution that requests an on-site review in accordance with paragraph (a)(4)(ii) of this section, until the Secretary conducts the review and notifies the institution that it is in compliance with Title IV, HEA program requirements.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. An institution's period of participation expires four years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that the Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(c) *Provisional certification.* (1) The Secretary may provisionally certify an institution if—

(i) The institution seeks initial participation in a Title IV, HEA program;

(ii) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(iii) The institution is a participating institution—

(A) That is applying for a certification that the institution meets the standards of this subpart;

(B) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16; and

(C) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(iv) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(v) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c) (3) and (4) of this section, a provisionally certified institution's period of participation expires—

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i) of this section;

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(ii), (iii), (iv), or (v) or (e)(2) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(vi) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, "provisional certification" means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution—

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) *Requirements for provisional certification to participate on a limited basis for institutions that are not financially responsible.* Notwithstanding paragraph (c)(1) of this section, the Secretary does not provisionally certify an institution that—

(1) Fails to meet the general standards of financial responsibility in § 668.15(b) or the exceptions to the general standards of financial responsibility in § 668.15(d), unless the institution—

(i) Demonstrates to the satisfaction of the Secretary that it has sufficient financial and administrative resources to participate in the Title IV, HEA programs under a funding arrangement other than the Department of Education's standard advance funding arrangement;

(ii) Submits to the Secretary a letter of credit in an amount and form acceptable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; and

(iii) Demonstrates that, during the preceding two award years, it has met all of its financial obligations and was current on its debt payments in accordance with the provisions in § 668.15(b) (3) and (4); or

(2) Is not financially responsible under § 668.15(c)(2), or is required, and has been required at least one other time during the five-year period preceding the Secretary's decision, to certify the institution provisionally, to comply with paragraph (d)(1) of this section, unless—

(i) The institution, or one or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution, or both, submit to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liabilities arising from the institution's participation in the Title IV, HEA programs; and

(ii) One or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution agree to be jointly or severally liable for any liabilities arising from the institution's participation in the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e) *Consequences for an institution whose State does not participate in the State Postsecondary Review program.* Notwithstanding any other provision of this section, if an institution or branch campus of the institution is in a State that does not participate in the State Postsecondary Review Program (34 CFR part 667), the Secretary, with regard to any particular Title IV, HEA program—

(1) Does not certify that the institution or branch campus, as applicable meets the standards of this subpart; and

(2) May provisionally certify the institution or branch campus, as applicable, unless—

(i) The institution or branch campus, as applicable, seeks initial participation in that program; or

(ii) The institution has undergone a change of ownership that results in a change of control, as determined under 34 CFR 600.31.

(f) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (f)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is—

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1989 Comp., p. 189) and E.O. 12689 (3 CFR, 1989 Comp., p. 235))

11. Newly redesignated § 668.14 is revised to read as follows:

§ 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other

than the SSIG and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary;

(ii) The State postsecondary review entity designated under 34 CFR part 667 for the State or States in which the institution or any of the institution's branch campuses or other locations are located if the institution was referred by the Secretary under 34 CFR 667.5;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of § 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of § 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, Federal SLS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan, Federal PLUS, or Federal SLS Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1) (A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, the institution has included a default management plan as part of its application under § 668.12 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D to this part;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The

Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D to this part;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State postsecondary review entities designated under 34 CFR part 667, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly—

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance, except that this requirement shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. This provision does not apply to the giving of token gifts to students or alumni for referring students for admission to the institution as long as: The gift is not in the form of money, check, or money order; no more than one such gift is given to any student or alumnus; and the gift has a value of not more than $25;

(23) It will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary, State postsecondary review entities designated under 34 CFR part 667, and nationally recognized accrediting agencies;

(24) It will comply with the institutional refund policy established in § 668.22;

(25) It is liable for all—

(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(ii) Refunds that the institution or its servicer may be required to make; and

(26) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation, the institution will—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the institution must certify that it—

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of § 668.47 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must—

(1) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution's fiscal year, of—

(i) The revenues derived by the institution from the institution's intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men's basketball.

(D) Revenues from women's basketball.

(E) Revenues from all other men's sports combined.

(F) Revenues from all other women's sports combined;

(ii) Expenses made by the institution for the institution's intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men's basketball.

(D) Expenses attributable to women's basketball.
(E) Expenses attributable to all other men's sports combined.
(F) Expenses attributable to all other women's sports combined; and
(iii) The total revenues and operating expenses of the institution; and
(2) Make the compilation and, where allowable by State law, the results of the audits required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.
(e) For the purposes of paragraph (d) of this section—
(1) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;
(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only;
(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and
(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only.
(f)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.
(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.
(g)(1) Except as provided in paragraphs (h) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.
(2) An institution may terminate a program participation agreement.
(3) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.
(h) An institution's program participation agreement automatically expires on the date that—
(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or
(2) The institution's participation ends under the provisions of § 668.26(a) (1), (2), (4), or (7).
(i) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)

12. Newly redesignated § 668.15 is revised to read as follows:

§ 668.15 Factors of financial responsibility.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.
(b) *General standards of financial responsibility.* In general, the Secretary considers an institution to be financially responsible only if it—
(1) Is providing the services described in its official publications and statements;
(2) Is providing the administrative resources necessary to comply with the requirements of this subpart;
(3) Is meeting all of its financial obligations, including but not limited to—
(i) Refunds that it is required to make; and
(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;
(4) Is current in its debt payments. The institution is not considered current in its debt payments if—
(i) The institution is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statement; or
(ii) the institution fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover those funds;
(5)(i) Maintains, at all times, a minimum cash reserve for the repayment of refunds equal to at least one quarter of the total dollar amount of refunds paid by the institution in the previous fiscal year. The cash reserve must be maintained in a cash reserve fund, consisting of—
(A) A cash deposit in a federally insured bank account; or
(B) U.S. Treasury securities backed by the full faith and credit of the United States of America, having an original maturity date of three months or less; and
(ii) Provides, in notes to its audited financial statement, information showing the balance maintained in the fund for the institution's two most recently completed fiscal years, the institution's refund expenditures for it's previous completed fiscal year, and any accrued refunds at each fiscal year end;
(6) Has not had, as part of the audit report for the institution's most recently completed fiscal year—
(i) A statement by the accountant expressing substantial doubt about the institution's ability to continue as a going concern; or
(ii) A disclaimed or adverse opinion by the accountant;
(7) For a for-profit institution—
(i)(A) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables. Should application of paragraph (b)(5) of this section cause a portion of the institution's cash reserves to be classified as a noncurrent asset, those cash reserves may be included in cash equivalents in calculating the institution's acid test ratio;
(B) Has not had operating losses over both of its 2 latest fiscal years that result in a decrease in tangible net worth in excess of 10 percent of the institution's tangible net worth at the beginning of the first year of the 2-year period. The Secretary may calculate any operating loss for an institution by excluding from net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and, the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles; and
(C) Had, for its latest fiscal year, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth shall exclude all assets classified as intangible in accordance with generally accepted accounting principles; or
(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations that are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization;
(8) For a nonprofit institution—
(i)(A) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information in notes to the audited financial statements;

(B) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. The acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables. Should application of paragraph (b)(5) of this section cause a portion of the institution's cash reserves to be classified as a non-current asset, those cash reserves may be included in cash equivalents in calculating the institution's acid test ratio;

(C)(*1*) Has, at the end of its latest fiscal year, a positive unrestricted current fund balance or positive unrestricted net assets. In calculating the unrestricted current fund balance or the unrestricted net assets for an institution, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(*2*) Has not had, an excess of current fund expenditures over current fund revenues over both of its 2 latest fiscal years that results in a decrease exceeding 10 percent in either the unrestricted current fund balance or the unrestricted net assets at the beginning of the first year of the 2-year period. The Secretary may exclude from net changes in fund balances for the operating loss calculation: Extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and the cumulative effect of changes in accounting principle. In calculating the institution's unrestricted current fund balance or the unrestricted net assets, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(9) For a public institution—

(i) Has its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity;

(ii) Has a positive current unrestricted fund balance if reporting under the Single Audit Act;

(iii) Has a positive unrestricted current fund in the State's Higher Education Fund, as presented in the general purpose financial statements;

(iv) Submits to the Secretary, a statement from the State Auditor General that the institution has, during the past year, met all of its financial obligations, and that the institution continues to have sufficient resources to meet all of its financial obligations; or

(v) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(c) *Past performance of an institution or persons affiliated with an institution.* An institution is not financially responsible if—

(1) A person who exercises substantial control over the institution or any member or members of the person's family alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer is not making payments in accordance with an agreement to repay that liability; or

(2) The institution has—

(i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR part 682) within the preceding five years;

(ii) Had—

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to resolve satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary issued pursuant to subpart G or subpart H of this part.

(d) *Exceptions to the general standards of financial responsibility.* (1) An institution is not required to meet the standard in paragraph (b)(5) of this section if the Secretary determines that the institution—

(i) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(ii) Contributes to that tuition recovery fund.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b)(1) through (4) and (b)(6) through (9) of this section, if the institution—

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against its precipitous closure, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary). The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if—

(A) The institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement (or, if no prior audited financial statement was requested by the Secretary, demonstrates in conjunction with its current audit that it would have satisfied this requirement), and that its most recent audited financial statement indicates that—

(*1*) All taxes owed by the institution are current;

(*2*) The institution's net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan;

(*3*) Loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year's working capital of the institution;

(*4*) The equity of a for-profit institution, or the total net assets of a non-profit institution, have not decreased by more than 10 percent of the prior year's total equity;

(*5*) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option allowances, 401k contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees;

(*6*) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party;

(*7*) All obligations owed to the institution by related parties are current, and that the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. For purposes of this section, a person does not become a related party by attending an institution as a student;

(B) There have been no material findings in the institution's latest compliance audit of its administration of the Title IV HEA programs; and

(C) There are no pending administrative or legal actions being taken against the institution by the Secretary, any other Federal agency, the institution's nationally recognized accrediting agency, or any State entity.

(3) An institution is not required to meet the acid test ratio in paragraph (b)(7)(i)(A) or (b)(8)(i)(B) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that—

(i) There is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in institution-occupied facilities, the acquisition of which was the direct cause of its failure to meet the acid test ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(*2*) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*3*) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability;

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(*2*) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(e) *Documentation of financial responsibility.* (1) The Secretary determines whether an institution is financially responsible under this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, the institution shall submit to the Secretary for its two latest complete fiscal years, a set of financial statements of the institution, prepared on an accrual basis in accordance with generally accepted accounting principles and audited by an independent certified public accountant in accordance with generally accepted auditing standards. The Secretary may also require the institution to submit or otherwise make available, the accountant's work papers. If an institution submits audited consolidated financial statements of its parent corporation for the Secretary to use in determining the institution's level of financial responsibility, the consolidated financial statements must be supplemented with consolidating schedules showing the consolidation of each of the parent corporation's subsidiaries and divisions (each separate institution participating in the Title IV, HEA programs must be shown separately), intercompany eliminating entries, and derived consolidated totals. The Secretary may also require the institution to submit additional substantive information.

(2) An institution shall submit the documents required in paragraph (e)(1) of this section annually within four months after the end of the institution's fiscal year, unless the Secretary requests a more frequent submission. Upon a showing of good cause, the Secretary may grant a filing extension to an institution.

(3) The Secretary considers the audit submission requirement of this section to be satisfied by an audit conducted in accordance with—

(i) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(ii) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(f) *Definitions and terms.* For the purposes of this section—

(1)(i) An "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation.

(ii) The term "ownership interest" includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(iii) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan;

(2) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer; and

(3) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

13. Newly redesignated § 668.16 is revised to read as follows:

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be "capable" under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary, and previous experience and documented success in administering the Title IV, HEA programs properly;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution;

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(vi) The number and distribution of financial aid staff; and

(vii) The use of third-party servicers to aid in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations;

(e) Establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits or preaccredits the institution, if the institution is accredited or preaccredited, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which a student must complete his or her educational program. The time frame must be—

(A) Based on the student's enrollment status;

(B) For an undergraduate program, no longer than 150 percent of the published length of the educational program for a full-time student; and

(C) Divided into increments of equal size, not to exceed the lesser of one academic year or one-half the published length of the educational program.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a

student must successfully complete at the end of each increment to complete his or her educational program within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, documentation of the student's social security number, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any credible information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any credible information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(j) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program and that are identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, State postsecondary review entities designated under 34 CFR part 667, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is—

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(l) Does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the period specified in paragraph (l)(1) of this section. The institution must calculate this withdrawal rate according to the following procedure:

(1)(i) For an institution at which the majority of regular students begin and end the academic year on the same date, the institution must calculate the rate for that academic year.

(ii) For an institution at which the majority of regular students do not begin and end the academic year on the same date, the institution must calculate the rate for any eight-month period.

(2) The institution must count all regular students who are enrolled on the first day of classes of the period specified in paragraph (l)(1) of this section, except those students who, during that period—

(i) Withdrew from, dropped out of, or were expelled from the institution; and

(ii) Were entitled to and actually received in a timely manner, in accordance with § 668.22(i)(2), a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy;

(m)(1) Has a cohort default rate—

(i) As defined in § 668.17, on loans made under the Federal Stafford Loan and Federal SLS programs to students for attendance at that institution of less than 25 percent for each of the three most recent fiscal years for which the Secretary has determined the institution's rate; and

(ii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance

at that institution that does not exceed 15 percent;

(2)(i) Except that, if the Secretary determines that the institution is not administratively capable solely because the institution fails to comply with paragraph (m)(1) of this section, the Secretary will provisionally certify the institution in accordance with § 668.13(c); and

(ii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(1) of this section by submitting an appeal in writing to the Secretary in accordance with and on the grounds specified in § 668.17(d); and

(n) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c; Section 4 of Pub. L. 95-452, 92 Stat. 1101-1109; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

14. Newly redesignated § 668.17 is revised to read as follows:

§ 668.17 Default reduction measures.

(a) *Default rates.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate and may, after consultation as the Secretary deems appropriate with cognizant guaranty agencies take one or more of the following actions:

(1) Initiate a proceeding under subpart G of this part to limit, suspend, or terminate the participation of the institution in the Title IV, HEA programs, if—

(i) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., a 50-percent rate was not reduced to 45 percent or below); or

(ii) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) To help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution, require the institution to submit to the Secretary and one or more guaranty agencies, as defined in 34 CFR part 682, any information relating to that determination, as reasonably required by the Secretary, within a time frame specified by the Secretary.

(b) *Default management plan.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution—

(1) Is greater than 20 percent but less than or equal to 40 percent, the institution must submit a default management plan that implements the measures described in appendix D to this part. An institution that wishes to submit a default management plan that deviates from the measures described in appendix D must submit a justification for the deviation that includes a rationale explaining why the measures from which the plan deviates are not appropriate for the institution's specific situation. The institution must implement the default management plan upon notification from the Secretary that the plan has been approved; or

(2) Exceeds 40 percent for any fiscal year, the institution must implement all of the default management reduction measures described in appendix D to this part no later than 60 days after the institution receives the Secretary's notification of the institution's cohort default rate. An institution is not required to submit any written plans to the Secretary or a guaranty agency unless the Secretary or guaranty agency specifically requests the institution to do so.

(c) *End of participation.* (1) Except as provided in paragraph (c)(6) of this section, an institution's participation in the FFEL programs ends if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (c)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992;

(ii) 30 percent for fiscal year 1993; and

(iii) 25 percent for fiscal year 1994 and all subsequent fiscal years.

(3) Except as provided in paragraph (c)(7) of this section, an institution whose participation ends under paragraph (c)(1) of this section may not participate in the FFEL programs beginning with the date that the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (c)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL programs ends under paragraph (c)(1) of this section may not participate in the FFEL programs until the institution—

(i) Receives notification from the Secretary that the notice ending the institution's participation is withdrawn pursuant to paragraph (d)(6) of this section; or

(ii) Following the period described in paragraph (c)(3) of this section, satisfies the Secretary that the institution meets all requirements for participation in the FFEL programs and executes a new agreement with the Secretary for participation in the FFEL programs.

(5) If the Secretary withdraws the notification of an institution's loss of participation pursuant to paragraph (d)(6) of this section, the participation of the institution is restored effective as of the date that the institution received notification from the Secretary of the loss of participation.

(6) Until July 1, 1998, the provisions of paragraph (c)(1) of this section and the provisions of § 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(7)(i) If the Secretary's designated department official receives written notice from an institution whose participation ends under paragraph (c)(1) of this section, within seven calendar days from the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, that the institution intends to appeal the end of participation under paragraph (d) of this section, the institution may, notwithstanding § 668.26(d) continue to participate in the FFEL programs until no later than the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, except as provided in paragraph (c)(7)(ii) of this section.

(ii) If an institution satisfies the conditions in paragraph (c)(7)(i) of this section for participating in the FFEL programs until the 30th calendar day following the date on which the

institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, the institution may, notwithstanding § 668.26(d), continue to participate in the FFEL programs after that date, until the Secretary issues a decision on the institution's appeal, if the institution, by the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, files an appeal that is complete in all respects in accordance with paragraph (d) of this section. However, the appeal of an institution relying on paragraph (d)(1)(i) of this section is not considered incomplete by virtue of a guaranty agency's not having yet complied with—or having failed to comply with—34 CFR 682.401(b)(14), which requires the agency to respond to an institution's request for verification of data within 15 working days, if the institution submitted that request within 10 working days from the date on which the institution received notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, and the institution simultaneously submitted a copy of that request to the Secretary's designated department official. When the institution receives the guaranty agency's response, to complete its appeal, the institution must submit the verified data to the Secretary's designated department official within five working days in order to continue participating in the FFEL programs until the Secretary issues a decision on the institution's appeal.

(d) *Appeal procedures.* (1) An institution may appeal the loss of participation in the FFEL programs under paragraph (c)(1) of this section by submitting an appeal in writing to the Secretary's designated department official that is postmarked no later than 30 days after it receives notification of its loss of participation. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation with corrected data verified by the cognizant guaranty agency or agencies would produce a cohort default rate for any of those fiscal years that is below the threshold percentage specified in paragraph (c)(2) of this section; or

(ii) The institution meets the following criteria:

(A)(*1*) Fifteen percent or fewer of the institution's students who are enrolled on at least a half-time basis receive Federal Stafford or Federal SLS loans for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal; or

(*2*) For any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, two-thirds or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to qualification by those students for an Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), as defined in 34 CFR 690.2, of zero for the applicable award year or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for the applicable award year of less than the poverty level, as determined under criteria established by the Department of Health and Human Services.

(B)(*1*) Two-thirds or more of the institution's students who were enrolled on a full-time basis in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of students who were classified as full-time at their initial enrollment in the institution, and were originally scheduled, at the time of enrollment, to complete their programs within the relevant twenty-four month period, with the number of these students who received a degree, certificate, or other recognized educational credential from the institution; transferred from the institution to a higher level educational program at another institution for which the prior program provided substantial preparation; or, at the end of the twenty-four month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs. The calculation does not include students who did not complete their programs because they left the institution to serve in the armed forces; and

(*2*) The institution had a placement rate of two-thirds or more with respect to its former students who received a degree, certificate, or other recognized educational credential from the institution in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal. This rate is calculated by determining the percentage of all those students who, based on evidence submitted by the institution, are on that date employed, or had been employed for at least 13 weeks following receipt of the credential from the institution, in the occupation for which the institution provided training, or are enrolled or had been enrolled for at least 13 weeks following receipt of the credential from the institution, in a higher level educational program at another institution for which the prior educational program provided substantial preparation.

(2) For purposes of paragraph (d)(1)(ii)(A) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

(3) An appeal submitted under paragraph (d)(1)(i) of this section is considered to be filed in a timely manner if the institution submits a letter of appeal by the 30-day deadline notifying the Secretary's designated department official that it is appealing on this basis, including with that letter a copy of the institution's request to each cognizant guaranty agency for verification of the cohort default rate data, and submits the verified data to the Secretary's designated department official within five working days of its receipt from the guaranty agency. For purposes of paragraph (d)(4) of this section, the institution's appeal is not considered complete until the institution submits the verified data to the Secretary's designated department official.

(4) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits a complete appeal that addresses the applicable criteria in paragraphs (d)(1) (i) through (iii) of this section to the Secretary's designated department official.

(5) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(6) The Secretary withdraws the notification of loss of participation in the FFEL programs sent to an institution under paragraph (c)(1) of this section, if the Secretary determines that the institution's appeal satisfies one of the grounds specified in paragraphs (d)(1)(i) through (iii) of this section.

(7)(i) An institution that appeals under paragraph (d)(1)(i) of this section must submit a written request to the guaranty agency or agencies that guaranteed the loans used in the calculation of its cohort default rate to verify the data used to calculate its cohort default rate and simultaneously provide a copy of that request to the Secretary's designated department official.

(ii) The written request must include the names and social security numbers of the borrowers the institution wishes the agency to verify and detailed information on the nature of the suspected inaccuracy in the data the institution is requesting the agency to verify.

(8) An institution must include in its appeal a certification by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(9) An institution that appeals on the ground that it meets the criteria contained in paragraph (d)(1)(ii) of this section must include in its appeal the following information:

(i) For purposes of paragraph (d)(1)(ii)(A)(*1*) of this section—

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, and social security number of each of the institution's current and former students who received Federal Stafford or Federal SLS loans during that twenty-four month period.

(ii) For purposes of paragraph (d)(1)(ii)(A)(*2*) of this section:

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, social security number, and Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), if applicable, of each student from a disadvantaged economic background who was enrolled on at least a half-time basis at the institution in the relevant twenty-four month period and the measure and data used to determine that the student is from a disadvantaged economic background.

(iii) For purposes of paragraph (d)(1)(ii)(B)(*1*) of this section—

(A) The number of students who were enrolled on a full-time basis at the institution in the relevant twenty-four month period;

(B) For each of those former students who received a degree, certificate, or other recognized educational credential from the institution, the student's name, address, and social security number;

(C) For each of those former students who transferred to a higher level educational program at another institution, the name, address, social security number of the student, and the name and address of the institution to which the student transferred and the name of the higher level program; and

(D) For each of those students who remained enrolled and was making satisfactory academic progress toward completion of the educational program, the student's name, address, and social security number.

(iv) For purposes of paragraph (d)(1)(ii)(B)(*2*) of this section—

(A) The number of students who received a degree, certificate, or other recognized educational credential at the institution in the relevant twenty-four month period;

(B) For each of those former students who is employed or had been employed for at least 13 weeks following receipt of a degree, certificate or other credential from the institution, the student's name, address, and social security number, the employer's name and address, the student's job title, and the dates the student was so employed; and

(C) For each of those former students who enrolled in a higher level educational program at another institution for which the appealing institution's educational program provided substantial preparation, the former student's name, address, and social security number, the subsequent institution's name and address, the name of the educational program, and the dates the former student was so enrolled.

(e) *Definitions.* The following definitions apply to this section and § 668.90:

(1)(i)(A) For purposes of the Federal Stafford loan and Federal SLS cohort default rate, except as provided in paragraph (e)(1)(ii) of this section, the term *cohort default rate* means—

(*1*) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on such loans who default before the end of the following fiscal year; and

(*2*) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on Federal Stafford loans or Federal SLS loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.

(B) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance.

(ii)(A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, a loan made in accordance with section 428A of the HEA (or a loan made under the Federal Consolidation Loan Program a portion of which is used to repay a Federal SLS loan) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on such enrollment. Each eligible lender of a loan made under section 428A (or a loan made under the Federal Consolidation Loan Program a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with

the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(iii)(A) A cohort default rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iv)(A) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This cohort default rate applies to the new consolidated institution.

(D) For a location of one institution that becomes a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(2) *Fiscal year* means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

15. Section 668.22 is revised to read as follows:

§ 668.22 Institutional refunds and repayments.

(a) *General.* (1) An institution shall have a fair and equitable refund policy under which the institution makes a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance, or whose parent received a Federal PLUS loan on behalf of the student if the student—

(i) Does not register for the period of enrollment for which the student was charged; or

(ii) Withdraws, drops out, takes an approved leave of absence, is expelled from the institution, or otherwise fails to complete the program on or after his or her first day of class of the period of enrollment for which he or she was charged.

(2) The institution shall provide a clear and conspicuous written statement containing its refund policy, including the allocation of refunds and repayments to sources of aid to a prospective student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. The institution must make available to students upon request examples of the application of this policy and inform students of the availability of these examples in the written statement. The institution shall make its policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but the institution shall return the portion of a refund allocable to the Title IV, HEA programs in accordance with paragraph (f) of this section whether the student follows those procedures or not. If the institution changes its refund policy, the institution shall ensure that all students are made aware of the new policy.

(3) The institution shall publish the costs of required supplies and equipment and shall substantiate to the Secretary upon request that the costs are reasonably related to the cost of providing the supplies and equipment to students.

(b) *Fair and equitable refund policy.* (1) For purposes of paragraph (a) of this section, an institution's refund policy is fair and equitable if the policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law;

(ii) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(iii) The *pro rata* refund calculation described in paragraph (c) of this section, for any student attending the institution for the first time whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged; or

(iv) For purposes of determining a refund when the *pro rata* refund calculation under paragraph (b)(1)(iii) of this section does not apply, and no standards for refund calculations exist under paragraph (b)(1)(i) and (ii) of this section, the larger of—

(A) The specific refund standards contained in Appendix A to this part; or

(B) The institution's refund policy.

(2) For purposes of paragraph (b)(1)(iii) of this section, "the 60 percent point in time in the period of enrollment for which the student has been charged" is—

(i) In the case of an educational program that is measured in credit hours, the point in calendar time when 60 percent of the period of enrollment for which the student has been charged, as defined in paragraph (d) of this section, has elapsed; and

(ii) In the case of an educational program that is measured in clock hours, the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged, as defined in paragraph (d) of this section.

(3) The institution must determine which policy under paragraph (b)(1) of this section provides for the largest refund to that student.

(c) *Pro Rata refund.* (1) "*Pro rata refund,*" as used in this section, means a refund by an institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date, rounded downward to the nearest 10 percent of that period, less any unpaid amount of a scheduled cash payment for the period of enrollment for which the student has been charged.

(2) A "scheduled cash payment" is the amount of institutional charges that is not paid for by financial aid for the period of enrollment for which the student has been charged exclusive of—

(i) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is

payable to the student even though the student has withdrawn;

(ii) Late disbursements of loans made under the Federal Stafford Loan, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d), and allowable late disbursements of unsubsidized Federal Stafford loans and loans made under the Federal Direct Student Loan Program; and

(iii) Late disbursements of State student financial assistance, for which the student is still eligible in spite of having withdrawn, made in accordance with the applicable State's written late disbursement policies. The late disbursement must be made within 60 days after the student's date of withdrawal, as defined in paragraph (i)(1) of this section, or the institution must—

(A) Recalculate the refund in accordance with this section, including recalculating the student's unpaid charges in accordance with this paragraph without consideration of the State late disbursement amount; and

(B) Return any additional refund amounts due as a result of the recalculation in accordance with paragraph (g) of this section.

(3) The "unpaid amount of a scheduled cash payment" is computed by subtracting the amount paid by the student for the period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged.

(4) An institution may exclude from the calculation of a *pro rata* refund under this paragraph a reasonable administrative fee not to exceed the lesser of—

(i) Five percent of the tuition, fees, room and board, and other charges assessed the student; or

(ii) One hundred dollars.

(5)(i) For purposes of this section, "other charges assessed the student by the institution" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to the student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by the institution or an entity affiliated or related to the institution.

(ii) The institution may exclude from the calculation of a *pro rata* refund under this paragraph the documented cost to the institution of unreturnable equipment issued to the student in accordance with paragraph (c)(5)(i) of this section or of returnable equipment issued to the student in accordance with paragraph (c)(5)(i) of this section if the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. For example, equipment is not considered to be returned in good condition and, therefore, is unreturnable, if the equipment cannot be reused because of clearly recognized health and sanitary reasons. The institution must clearly and conspicuously disclose in the enrollment agreement any restrictions on the return of equipment, including equipment that is unreturnable. The institution must notify the student in writing prior to enrollment that return of the specific equipment involved will be required within 20 days of the student's withdrawal.

(iii) An institution may not delay its payment of the portion of a refund allocable under this section to a Title IV, HEA program or a lender under 34 CFR 682.607 by reason of the process for return of equipment prescribed in paragraph (c)(5) of this section.

(6) For purposes of this section—

(i) "Room" charges do not include charges that are passed through the institution from an entity that is not under the control of, related to, or affiliated with the institution; and

(ii) "Other charges assessed the student by the institution" do not include fees for group health insurance, if this insurance is required for all students and the purchased coverage remains in effect for the student throughout the period for which the student was charged.

(7)(i) For purposes of this section, a student attending an institution for the first time is a student who—

(A) Has not previously attended at least one class at the institution; or

(B) Received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution.

(ii) A student remains a first-time student until the student either—

(A) Withdraws, drops out, or is expelled from the institution after attending at least one class; or

(B) Completes the period of enrollment for which he or she has been charged.

(8) For purposes of this paragraph, "the portion of the period of enrollment for which the student has been charged that remains" is determined—

(i) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the student's withdrawal date;

(ii) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of scheduled clock hours remaining to be completed by the student in that period as of the student's withdrawal date; and

(iii) In the case of an educational program that consists predominantly of correspondence courses, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

(d) *Period of enrollment for which the student has been charged.* (1) For purposes of this section, "the period of enrollment for which the student has been charged," means the actual period for which an institution charges a student, except that the minimum period must be—

(i) In the case of an educational program that is measured in credit hours and uses semesters, trimesters, quarters, or other academic terms, the semester, trimester, quarter or other academic term; or

(ii) In the case of an educational program that is measured in credit hours and does not use semesters, trimesters, quarters, or other academic terms, or an educational program that is measured in clock hours, the lesser of the length of the educational program or an academic year.

(2) If an institution charges by different periods for different charges, the "period of enrollment for which the student has been charged" for purposes of this section is the longest period for which the student is charged. The institution must include any charges assessed the student for the period of enrollment or any portion of that period of enrollment when calculating the refund.

(e) *Overpayments.* (1) An institution shall determine whether a student has received an overpayment for noninstitutional costs for the period of enrollment for which the student has been charged if—

(i) The student officially withdraws, drops out, is expelled, or takes an approved leave of absence on or after his or her first day of class of that period; and

(ii) The student received Title IV, HEA program assistance other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for that period.

(2)(i) To determine if the student owes an overpayment, the institution shall subtract the noninstitutional costs that the student incurred for that portion of the period of enrollment for which the student has been charged from the amount of all assistance (other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) that the institution disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(f) *Repayments to Title IV, HEA programs of institutional refunds and overpayments.* (1)(i) An institution shall return a portion of the refund calculated in accordance with paragraph (b) of this section to the Title IV, HEA programs if the student to whom the refund is owed received assistance under any Title IV, HEA program other than the FWS Program.

(ii) The portion of the refund that an institution shall return to the Title IV, HEA programs may not exceed the amount of assistance that the student received under the Title IV, HEA programs other than under the FWS Program for the period of enrollment for which the student has been charged.

(2) For purposes of this section, except for the calculation of a *pro rata* refund required under paragraph (b)(1)(iii) of this section—

(i) An institutional refund means the amount paid for institutional charges for the period of enrollment for which the student has been charged minus the amount that the institution may retain under paragraph (f)(2)(iii) of this section for the portion of the period of enrollment for which the student has been charged that the student was actually enrolled at the institution;

(ii) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that has not been paid by financial aid for the period of enrollment for which the student has been charged, exclusive of—

(A) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn;

(B) Late disbursements of loans made under the Federal Stafford, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d), and allowable late disbursements of unsubsidized Federal Stafford loans and loans made under the Federal Direct Student Loan Program; and

(C) Late disbursements of State student financial assistance, for which the student is still eligible in spite of having withdrawn, made in accordance with the applicable State's written late disbursement policies. The late disbursement must be made within 60 days after the student's date of withdrawal, as defined in paragraph (i)(1) of this section, or the institution must—

(*1*) Recalculate the refund in accordance with this section, including recalculating the student's unpaid charges in accordance with this paragraph without consideration of the State late disbursement amount; and

(*2*) Return any additional refund amounts due as a result of the recalculation in accordance with paragraph (g) of this section;

(iii) In determining the amount that the institution may retain for the portion of the period of enrollment for which the student has been charged during which the student was actually enrolled, an institution shall—

(A) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged; and

(B) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy; and

(iv) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the FWS Program) paid for institutional charges for the period of enrollment for which the student has been charged if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount that may be retained by the institution under the institution's refund policy.

(3)(i) A student must repay to the institution or to the Title IV, HEA programs a portion of the overpayment as determined according to paragraph (e) of this section. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR parts 673, 674, 675, 676, 690, and 691).

(ii) The portion of the overpayment that the student or the institution (if the institution recovers the overpayment) shall return to the Title IV, HEA programs may not exceed the amount of assistance received under the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for the period of enrollment for which the student has been charged.

(iii) Unless otherwise provided for in applicable program regulations, if the amount of the overpayment is less than $100, the student is considered not to owe an overpayment, and the institution is not required to contact the student or recover the overpayment.

(g) *Allocation of refunds and overpayments.* (1) Except as provided in paragraph (g)(2) of this section, if a student who received Title IV, HEA program assistance (other than assistance under the FWS Program) is owed a refund calculated in accordance with paragraph (b) of this section, or if a student who received Title IV, HEA program assistance (other than assistance under the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) must repay an overpayment calculated in accordance with paragraph (e) of this section, an institution shall allocate that refund and any overpayment collected from the student in the following order:

(i) To eliminate outstanding balances on Federal SLS loans received by the student for the period of enrollment for which he or she was charged.

(ii) To eliminate outstanding balances on unsubsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iii) To eliminate outstanding balances on subsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iv) To eliminate outstanding balances on Federal PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(v) To eliminate outstanding balances on Federal Direct Stafford loans received by the student for the period of enrollment for which he or she was charged.

(vi) To eliminate outstanding balances on Federal Direct PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(vii) To eliminate outstanding balances on Federal Perkins loans received by the student for the period of enrollment for which he or she was charged.

(viii) To eliminate any amount of Federal Pell Grants awarded to the student for the period of enrollment for which he or she was charged.

(ix) To eliminate any amount of Federal SEOG Program aid awarded to the student for the period of enrollment for which he or she was charged.

(x) To eliminate any amount of other assistance awarded to the student under programs authorized by Title IV of the HEA for the period of enrollment for which he or she was charged.

(xi) To repay required refunds of other Federal, State, private, or institutional student financial assistance received by the student.

(xii) To the student.

(2) The institution must apply the allocation policy described in paragraph (g)(1) of this section consistently to all students who have received Title IV, HEA program assistance and must conform that policy to the following:

(i) No amount of the refund or of the overpayment may be allocated to the FWS Program.

(ii) No amount of overpayment may be allocated to the Federal Stafford Loan, Federal PLUS, or Federal SLS Program.

(iii) The amount of the Title IV, HEA program portion of the refund allocated to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate borrower's lender by the institution in accordance with program regulations (34 CFR part 682).

(iv) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts by the institution within 30 days of the date that the student officially withdraws, is expelled, takes an approved leave of absence, or the institution determines that a student has unofficially withdrawn.

(v) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts within 30 days of the date that the student repays the overpayment.

(h) *Financial aid.* For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including Federal PLUS loans received on the student's behalf) from Federal; State; institutional; or other scholarship, grant, or loan programs.

(i) *Refund dates*—(1) *Withdrawal date.* (i)(A) Except as provided in paragraph (i)(1)(i)(B) and (C) of this section, a student's withdrawal date is the earlier of—

(*1*) The date that the student notifies an institution of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(*2*) If the student drops out of the institution without notifying the institution (does not withdraw officially), the last recorded date of class attendance by the student, as documented by the institution.

(B) If the student takes an approved leave of absence, the student's withdrawal date is the last recorded date of class attendance by the student, as documented by the institution.

(C) If the student is enrolled in an educational program that consists predominantly of correspondence courses, the student's withdrawal date is normally the date of the last lesson submitted by the student, if the student failed to submit the subsequent lesson in accordance with the schedule for lessons established by the institution. However, if the student establishes in writing, within 60 days of the date of the last lesson that he or she submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the institution may restore that student to "in school" status for purposes of funds received under the Title IV, HEA programs. The institution may not grant the student more than one restoration to "in school" status on this basis.

(ii) An institution must determine the student's withdrawal date within 30 days after the expiration of the earlier of the—

(A) Period of enrollment for which the student has been charged;

(B) Academic year in which the student withdrew; or

(C) Educational program from which the student withdrew.

(2) *Timely payment.* An institution shall pay a refund that is due to a student—

(i) If a student officially withdraws or is expelled, within 30 days after the student's withdrawal date;

(ii) If a student drops out, within 30 days of the earliest of the—

(A) Date on which the institution determines that the student dropped out;

(B) Expiration of the academic term in which the student withdrew; or

(C) Expiration of the period of enrollment for which the student has been charged; or

(iii) If a student takes an approved leave of absence, within 30 days after the last recorded date of class attendance by the student, as documented by the institution.

(Authority: 20 U.S.C. 1091b, 1092, 1094).

16. Section 668.23 is revised to read as follows:

§ 668.23 Audits, records, and examinations.

(a) An institution or a foreign institution as defined in 34 CFR 600.52 that participates in the Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal Pell Grant, PAS, or FDSL Program shall comply with the regulations for that program concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b)(1) An institution or a foreign institution as defined in 34 CFR 600.52 that participates in any Title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, the appropriate nationally recognized accrediting agency, and the appropriate State postsecondary review entity designated under 34 CFR part 667, in the conduct of audits, investigations, and program reviews authorized by law.

(2) A third-party servicer shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution contracting with the servicer participates, the appropriate nationally recognized accrediting agency of an institution with which the servicer contracts, and the State postsecondary review entity designated under 34 CFR part 667, in the conduct of audits, investigations, and program reviews authorized by law.

(3) The institution's or servicer's cooperation must include—

(i) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records;

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution or servicer shall not—

(A) Refuse to supply any relevant information;

(B) Refuse to permit interviews with those personnel that do not include the presence of the institution's or servicer's management; and

(C) Refuse to permit interviews with those personnel that are not tape recorded by the institution or servicer.

(c)(1)(i) An institution or a foreign institution as defined in 34 CFR 600.52 that participates in the FDSL, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Pell Grant, or PAS Program shall have performed at least annually a compliance audit of its Title IV, HEA programs.

(ii) A third-party servicer shall have performed at least annually a compliance audit of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract, unless—

(A) The servicer contracts with only one participating institution; and

(B) The audit of that institution's participation involves every aspect of the servicer's administration of that Title IV, HEA program.

(iii) To meet the requirements of paragraph (c)(1)(ii) of this section, a third-party servicer that contracts with more than one participating institution may submit a single compliance audit report that covers every aspect of the servicer's administration of the participation in the Title IV, HEA programs for each institution with which the servicer contracts.

(iv) The audit required under paragraph (c)(1)(i) or (ii) of this section shall be conducted by an independent auditor in accordance with the general standards and the standards for compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

(2)(i) The institution's first audit must cover the institution's activities for the entire period of time since the institution began to participate in the Title IV, HEA program for which the audit is performed. Each subsequent audit must cover the institution's activities for the entire period of time since the preceding audit.

(ii) The servicer's first audit must cover the servicer's activities for its first full fiscal year beginning on or after July 1, 1994, and include any period from the effective date to the beginning of the first full fiscal year. Each subsequent audit that the servicer has performed must cover the servicer's activities for the entire period of time since the servicer's preceding audit.

(3) The institution or servicer, as applicable, shall submit its audit report to the Department of Education's Inspector General within 120 days of the end of the institution's or servicer's fiscal year or, if applicable, in accordance with deadlines established in the Single Audit Act.

(4) The Secretary may require the institution or servicer to provide, upon request, to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, nationally recognized accrediting agencies, and State postsecondary review entities designated under 34 CFR part 667, the results of any audit conducted under this section.

(d) Procedures for audits are contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

(e)(1) An institution, a foreign institution as defined 34 CFR 600.52, or a third-party servicer that has an audit conducted in accordance with this section shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(2) A third-party servicer shall give the Secretary and the Inspector General access to records or other documents necessary to review an institution's audit.

(3) An institution shall give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's audit.

(f) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(g) Upon written request, an institution, a foreign institution as defined in 34 CFR 600.52, or a third-party servicer shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any Title IV, HEA program funds.

(h)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution or foreign institution as defined in 34 CFR 600.52 shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The educational program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her educational program;

(iv) Any refunds due or paid to the student, the Title IV, HEA program or accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19);

(vii) The verification of student aid application data.

(viii) Financial and other institutional records necessary to determine the institutional eligibility, financial responsibility, and administrative capability of the institution; and

(2)(i) An institution or a foreign institution as defined in 34 CFR 600.52 shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA program assistance, that are relevant to the institution's admission standards.

(ii) An institution or a foreign institution as defined in 34 CFR 600.52 at which only certain educational programs have been determined eligible shall establish and maintain records regarding the admission requirements and educational qualifications of each regular student enrolled in the eligible program or programs, whether the

student received Title IV, HEA program assistance or not.

(3) Records required under applicable program regulations and this part shall be—

(i) Systematically organized;

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion; and

(iii) Retained by the institution for the longer of at least five years from the time the record is established or the period of time required under the applicable program regulations or this part.

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141 and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

17. Section 668.24 is revised to read as follows:

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of an institution or third-party servicer, an expenditure made by the institution or servicer or the institution's or servicer's compliance with an applicable requirement (including the lack of proper documentation), is questioned, the Secretary notifies the institution or servicer of the questioned expenditure or compliance.

(2) If the institution or servicer believes that the questioned expenditure or compliance was proper, the institution or servicer shall notify the Secretary in writing of the institution's or servicer's position and the reasons for that position.

(3) The institution's or servicer's response must be based on performing an attestation engagement in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants and must be received by the Secretary within 45 days of the date of the Secretary's notification to the institution or servicer.

(b)(1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's Title IV, HEA programs, the servicer shall notify each institution under whose contract the servicer owes a liability of the determination. The servicer shall also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(c)(1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (b) and (c)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully aveilable through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary's notification, under paragraph (a)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer shall repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (c)(2) of this section.

(d) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the Title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(Authority: 20 U.S.C. 1094)

18. Section 668.25 is redesignated as § 668.26 and a new § 668.25 is added to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

(a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(c) In a contract with an institution, a third-party servicer shall agree to—

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;

(2) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications; and

(vi) False statements of income;

(3) Be jointly and severally liable with the institution to the Secretary for any

violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan or Federal SLS Program proceeds to a student—

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under § 668.23(h); and

(ii) Calculate and pay refunds and repayments due a student, the Title IV, HEA program accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs in accordance with the institution's refund policy, the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—

(i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if—

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a third-party servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; and

(ii) One or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution's notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

19. Newly redesignated § 668.26 is revised to read as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

(a) An institution's participation in a Title IV, HEA program ends on the date that—

(1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution's participation is terminated under the proceedings in subpart G of this part;

(4) The institution's period of participation, as specified under § 668.13, expires, or the institution's provisional certification is revoked under § 668.13;

(5) The institution's program participation agreement is terminated or expires under § 668.14;

(6) The institution's participation ends under § 668.17(c); or

(7) The Secretary receives a notice from the appropriate State postsecondary review entity designated under 34 CFR part 667 that the institution's participation should be withdrawn.

(b) If an institution's participation in a Title IV, HEA program ends, the institution shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends—

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of five years of all records concerning the administration of that program;

(4) If the institution's participation in the Federal Perkins Loan or FDSL Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution's participation in the NEISP or SSIG Program ended—

(i) Inform immediately the State in which the institution is located of that fact; and

(ii) Notwithstanding paragraphs (c) through (e) of this section, follow the

instructions of that State concerning the end of that participation;

(6) If the institution's participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs; and

(7) Continue to distribute refunds according to § 668.22.

(c) If an institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students, the institution shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution's administrative allowance, if applicable; and

(2) Return to the appropriate lenders any Federal Stafford Loan and Federal SLS program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant or PAS Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Stafford or Federal SLS loan to satisfy any unpaid commitment made to the student under the Federal Stafford Loan or Federal SLS Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation;

(iv) The commitment was made for attendance during that period of enrollment; and

(v) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the FDSL Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Direct Student loan only if—

(i) The institution's participation in the FDSL Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) For the purposes of this section—

(1) A commitment under the Federal Pell Grant and PAS programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report;

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid; and

(3) A commitment under the Federal Stafford and Federal SLS programs occurs when the Secretary or a guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094, 1099a–3)

20. Section 668.81 is amended by redesignating paragraph (e)(1) introductory text as paragraph (a) introductory text; revising newly redesignated paragraph (a) introductory text; removing paragraph (a)(2); redesignating paragraph (a)(1)(i) through (a)(1)(iii) as paragraph (a)(1) through (3), respectively; adding a new paragraph (a)(4); revising paragraphs (b), (c), and (d); and removing paragraph (f) to read as follows:

§ 668.81 Scope and special definitions.

(a) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

* * * * *

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought;

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution's or a provisionally certified participating institution's period of participation, as specified under § 668.13, has expired; or

(4) A participating institution's provisional certification is revoked under the procedures in § 668.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating

institution (i.e., advance payments and payments by way of reimbursements).

* * * * *

21. Section 668.82 is revised to read as follows:

§ 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary—

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution's third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for—

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution's participation in that program; or

(2) An emergency action against the servicer, a fine on the servicer, or the limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

(d)(1) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary duty if—

(i)(A) The servicer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to § 668.15, has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts in a capacity that involves any aspect of the administration of the Title IV, HEA programs with any other person, agency, or organization that has been or whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.15, over the servicer.

(2) A violation for a reason contained in paragraph (d)(1) of this section is grounds for terminating—

(i) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraph (d)(1)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if—

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 34 CFR 85.305 or 85.405 for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution's or servicer's participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (e)(1) of this section is grounds for terminating—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program. The violation is also grounds for terminating, under this subpart, the participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution knew or should have known of the violation.

(f)(1) The debarment of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, by the Secretary or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedure Act), terminates, for the duration of the debarment—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(2)(i) The suspension of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, by the Secretary or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, suspends—

(A) The institution's participation in any Title IV, HEA program; and

(B) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(ii) A suspension under this paragraph lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that the suspension may last longer if—

(A) The institution or servicer, as applicable, and the Secretary, agree to an extension of the suspension; or

(B) The Secretary begins a limitation or termination proceeding against the institution or servicer, as applicable, under this subpart before the 60th day of the suspension.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1070, *et seq.*, 1082(a)(1) and (h)(1), 1094(c)(1)(D) and (H), and 3474)

22. Section 668.83 is revised to read as follows:

§ 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(2)(i) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(ii) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(i) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program; or

(ii) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official—

(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable—

(A) The participation of the institution in one or more Title IV, HEA programs; or

(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include—

(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford, Federal PLUS, or Federal SLS loan if a refund allocable to that loan had been made in the amount and at the time required;

(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if—

(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in §§ 668.72, 668.73, or 668.74 related to those services;

(B) The institution lacks the administrative or financial ability to provide those services in full; or

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to compensate by appropriate refund for any portion of an educational program not completed by a student; and

(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Secretary;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs or an independent auditor;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not—

(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;

(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;

(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program—

(A) Certify an application for a loan under that program;

(B) Deliver loan proceeds to student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or

(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution's participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.90(c), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution or third-party servicer does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution or third-party servicer of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

23. Section 668.84 is revised to read as follows:

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* (1) The Secretary may impose a fine of up to $25,000 per violation on a participating institution or third-party servicer that—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation. This notice—

(i) Informs the institution or servicer of the Secretary's intent to fine the institution or servicer, as applicable, and the amount of the fine and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the fine, which is at least 20 days from mailing of the notice of intent;

(iii) Informs the institution or servicer that the fine will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a written request for a hearing or written material indicating why the fine should not be imposed; and

(iv) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

24. Section 668.85 is revised to read as follows:

§ 668.85 Suspension proceedings.

(a) *Scope and consequences.* (1) The Secretary may suspend an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless—

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice—

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution's participation or the servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in § 668.90(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

25. Section 668.86 is revised to read as follows:

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* (1) The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a limitation or termination proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The consequences of the limitation or termination of the institution's

participation or the servicer's eligibility are described in §§ 668.93 and 668.94, respectively.

(b) *Procedures*. (1) A designated department official begins a limitation or termination proceeding by sending an institution or third-party servicer a notice by certified mail, return receipt requested. In the case of a limitation or termination proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. This notice—

(i) Informs the institution or servicer of the intent of the Secretary to limit or terminate the institution's participation or servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action, and, in the case of a limitation proceeding, states the limits to be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceeding*. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

26. Section 668.87 is revised to read as follows:

§ 668.87 Prehearing conference.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

27. Section 668.88 is amended by revising paragraph (b) introductory text and paragraph (d) to read as follows:

§ 668.88 Hearing.

* * * * *

(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following—

* * * * *

(d) The designated department official makes a transcribed record of the proceeding and makes one copy of the record available to the institution or servicer.

(Authority: 20 U.S.C. 1094)

28. Section 668.89 is amended by revising paragraphs (a), (b)(2), and (c) introductory text, and adding a new paragraph (d) to read as follows:

§ 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b) * * *

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—

* * * * *

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

29. Section 668.90 is revised to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an

initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d)(1), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) If an action brought against an institution or third-party servicer involves its failure to provide surety in the amount specified by the Secretary under § 668.15, the hearing official finds that the amount of the surety established by the Secretary was appropriate, unless the institution can demonstrate that the amount was unreasonable;

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in § 668.17(a)(1), if the hearing official finds that an institution's Federal Stafford loan and Federal SLS cohort default rate, as defined in § 668.17(e), meets the conditions specified in § 668.17(a)(1) for initiation of limitation, suspension, or termination proceedings, the hearing official also finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution demonstrates that it has implemented the default reduction measures described in Appendix D to this part;

(v) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(3), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(vi) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.15(d)(4) have been met; and

(vii) In a termination action against an institution or third-party servicer on the grounds that the institution or servicer, as applicable, engaged in fraud involving the administration of any Title IV, HEA program, the hearing official finds that the termination action is warranted if the hearing official finds that the institution or servicer, as applicable, engaged in that fraud. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, an independent auditor, an eligible institution, or a third-party servicer;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted solely through written submissions, the parties must agree to findings of fact.

(b) (1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution's participation or servicer's eligibility, the suspension takes effect on the later of—

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official's original notice of intent to suspend the institution's participation or servicer's eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c) (1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2) (i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the

functions described in paragraph (c)(2)(vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Authority: 20 U.S.C. 1082, 1094)

30. Section 668.91 is amended by revising the heading; and revising paragraphs (a)(1), (a)(2), (b) heading, (b)(1), (b)(2) introductory text, and (c) to read as follows:

§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) * * *

(1) A request by an institution or third-party servicer for a hearing or show-cause opportunity, other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

* * * * *

(b) *Confirmation of mailing and receipt dates.* (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable—

* * * * *

(c) *Refusals.* If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

31. Section 668.92 is revised to read as follows:

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1) (i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5) For purposes of assessing a fine on a third-party servicer, the extent to which—

(i) Violations are caused by repeated mechanical systemic unintentional errors. The Secretary counts the total of violations caused by a repeated mechanical systemic unintentional error as a single violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system; and

(ii) The financial loss of Title IV, HEA program funds was attributable to a repeated mechanical systemic unintentional error.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

32. Section 668.93 is revised to read as follows:

§ 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

33. Section 668.94 is revised to read as follows:

§ 668.94 Termination.

(a) A termination.

(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party servicer's eligibility to contract with any institution to

administer any aspect of the institution's participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution's participation in that program;

(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution's participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee commitments have been issued by the Secretary or a guaranty agency for those disbursements).

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer's eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution's students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution.

(Authority: 20 U.S.C. 1094)

34. Section 668.95 is revised to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

(a) The designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution's or servicer's violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs—

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds required under program regulations; and

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(Authority: 20 U.S.C. 1094)

35. Section 668.96 is revised to read as follows:

§ 668.96 Reinstatement after termination.

(a) (1) An institution whose participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that participation.

(2) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that eligibility.

(b) An institution whose participation has been terminated or a third-party servicer whose eligibility has been terminated may request reinstatement only after the later of the expiration of—

(1) Eighteen months from the effective date of the termination; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(c) To be reinstated, an institution or third-party servicer must submit its request for reinstatement in writing to the Secretary and must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation or violations on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution or servicer, as applicable, has improperly received, withheld, disbursed, or caused to be disbursed;

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

36. Section 668.97 is revised to read as follows:

§ 668.97 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of—

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the institution's or servicer's request, an opportunity to show cause why the participation or eligibility, as applicable, should be fully reinstated.

(g) The institution's or servicer's request for an opportunity to show cause does not waive—

(1) The institution's right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation or limitations pending the outcome of the opportunity to show cause; and

(2) The servicer's right to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer complies with the continuing limitation pending the outcome of the opportunity to show cause.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

37. Section 668.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

* * * * *

38. Section 668.112 is revised to read as follows:

§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

39. Section 668.113 is revised to read as follows:

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or materials admissible under the terms of § 668.116(e) and (f), no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

40. Section 668.114 is revised to read as follows:

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the parties to the proceeding of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the terms of § 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

(Authority: 20 U.S.C. 1094)

41. Section 668.116 is amended by revising paragraphs (b), (d), (e)(1), (f), and (g) to read as follows:

§ 668.116 Hearing.

* * * * *

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

* * * * *

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e) (1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials, if the institution provided those work papers, records, or materials to the Department of Education no later than the date by which the institution was required to file its request for review in accordance with § 668.113.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer, if the servicer provided those work papers, records, or materials to the Department of Education no later than the date that the servicer was required to file the request for review under § 668.113.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review, if the records or materials were provided to the Department of Education by the institution or servicer no later than the date by which the institution or servicer was required to file its request for review in accordance with § 668.113.

(vi) Other Department of Education records and materials if the records and materials were provided to the hearing official no later than 3 days after the institution's or servicer's filing of its request for review.

* * * * *

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

(g) (1) The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes one copy of that record available to each of the parties to the proceeding.

* * * * *

42. Section 668.123 is revised to read as follows:

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of § 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

(Authority: 20 U.S.C. 1094)

43. A new Appendix A to part 668 is added to read as follows:

Appendix A to Part 668—Standards for Acceptable Refund Policies by Participating Institutions

For purposes of § 668.22(b)(1)(iv)(A), the Secretary considers an institution to have a fair and equitable refund policy if the institution uses a policy that meets the minimum requirements of this appendix. These requirements do not affect an institution's obligation to comply with other Department of Education regulations.

(I) *The governing board of the institution must review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution and society; as such, pricing and refund policies must receive board attention and approval.

(II) *The institution must seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is an essential approach for assessing student needs and creating public awareness of institutional requirements.

(III) *The institution must publish a current schedule of all student charges (including the costs of required supplies and equipment), publish a statement of the purpose for such charges and related refund policies, have those statements readily available free of charge to current and prospective students, and substantiate that the costs of required supplies and equipment are reasonably related to the cost of providing the supplies and equipment to the students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *The institution must clearly designate all optional charges as "optional" in all published schedules and related materials.* Charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Statements accompanying the schedule may include institutional endorsements of the optional program or service. The institution must state clearly in its schedule if a charge is optional for some students but required for others.

(V) *The institution must clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *The institution must refund housing rental charges, less a deposit, as long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *The institution must refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract.* Subsequent board charges should be refunded on a *pro rata* basis. It is reasonable to make a refund for those goods and services not consumed. The deposit should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional refund policy must include the following requirements:*

A. The institution must refund 100 percent of the tuition charges, less an administrative fee that does not exceed the lesser of $100 or 5 percent of the tuition, if the student submits written notice of cancellation on or before one week preceding the first day of classes for the period of enrollment for which the student was charged.

B. The institution must refund at least 90 percent of the tuition charges if the student submits written notice of cancellation between the end of the period of time specified in (VIII) A. and the end of the first 10 percent (in time) of the period of enrollment for which the student was charged.

C. The institution must refund at least 50 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 10 percent (in time) of the period of enrollment for which the student was charged and the end of the first 25 percent (in time) of that period of enrollment.

D. The institution must refund at least 25 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 25 percent (in time) of the period of enrollment for which the student was charged and the end of the first 50 percent (in time) of the period of enrollment.

E. For purposes of this policy, "tuition charges" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to a student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by the institution or an entity affiliated or related to the institution.

(F) The institution may exclude from the calculation of a refund owed under this paragraph the documented cost to the institution of unreturnable equipment issued to the student in accordance with paragraph (VIII) E of this appendix or of returnable equipment issued to the student in accordance with paragraph (VIII) E of this appendix if the student does not return the equipment in good condition, allowing for

reasonable wear and tear, within 20 days following the date of the student's withdrawal. For example, equipment is not considered to be returned in good condition and, therefore, is unreturnable, if the equipment cannot be reused because of clearly recognized health and sanitary reasons. The institution must clearly and conspicuously disclose in the enrollment agreement any restrictions on the return of equipment, including equipment that is unreturnable. The institution must notify the student in writing prior to enrollment that return of the specific equipment involved will be required within 20 days of the student's withdrawal.

(IX) *The institution must assess no penalty charges where the institution, as opposed to the student, is in error.* Penalty charges, such as those involving late registration fees, change-of-schedule fees, and late payment fees, must not be assessed if it is determined that the student is not responsible for the action causing the charges to be levied.

(X) *The institution must advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that the request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *The institution must pay or credit refunds due in accordance with § 668.22(i)(2).*

(XII) *The institution must publicize, as a part of its dissemination of information on charges and refunds, that an appeals process exists for students or parents who believe that individual circumstances warrant exceptions from published policy. The informational materials must include the name, title, and address of the official responsible for handling appeals.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

44. Appendix D to part 668 is amended by revising the introductory paragraphs to read as follows:

Appendix D to Part 668—Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the Federal Stafford Loan and Federal SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under § 668.17 may avoid that sanction by demonstrating that the institution has implemented the measures included in this appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

45. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C 1071 to 1087–2, unless otherwise noted.

46. In § 682.200 paragraph (b) is amended by revising paragraph (1) and adding a new paragraph (5) in the definition of "Lender" and adding a new definition of "Third-party servicer" in alphabetical order, and by revising the authority citation to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)–(5) of this definition.

* * * * *

(5) The term eligible lender does not include any lender that—

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

* * * * *

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

* * * * *

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141; E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235))

47. Section 682.401 is amended by adding a new paragraph (b)(23) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(23) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

* * * * *

48. Section 682.413 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 682.413 Remedial actions.

(a) (1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)–(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The lender has not repaid in full the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability;

(B) The lender has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the lender by offsetting the lender's bill to the Secretary for interest benefits or special allowance, if—

(*1*) The bill is submitted after the 30 day period specified in paragraph (a)(3)(ii)(A) of this section has passed; and

(*2*) The lender has not paid, or made satisfactory arrangements to pay, the liability.

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of § 682.406(a).

(c) (1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine on a third-party servicer, a repeated mechanical systemic unintentional error shall be counted as one violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1).

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The guaranty agency has not repaid in full the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability;

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the guaranty agency by offsetting the guaranty agency's first reinsurance claim to the Secretary, if—

(*1*) The claim is submitted after the 30-day period specified in paragraph (c)(3)(ii)(A) of this section has passed; and

(*2*) The guaranty agency has not paid, or made satisfactory arrangements to pay, the liability.

(d) (1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to "the institution" in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

* * * * *

49. Section 682.414 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

* * * * *

50. A new § 682.416 is added to subpart D to read as follows:

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) *Standards for administrative capability.* A third-party servicer is considered administratively responsible if it—

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL programs in accordance with FFEL programs regulations;

(2) Has business systems including combined automated and manual systems, that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL programs regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) *Standards of financial responsibility.* The Secretary applies the provisions of 34 CFR 668.15(b) (1)–(4) and (6)–(9) to determine that a third-party servicer is financially responsible under this part. References to "the institution" in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) *Special review of third-party servicer.* (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer, the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) *Past performance of third-party servicer or persons affiliated with servicer.* Notwithstanding paragraphs (b) and (c) of this section, a third-party servicer is not financially responsible if—

(1) (i) The servicer; its owner, majority shareholder, or chief executive officer; any person employed by the servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of an entity with which the servicer contracts where that person, entity, or officer or employee of the entity acts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds, unless—

(A) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(B) The persons who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(C) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea; or administrative or judicial determination; or

(ii) The servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is—

(A) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer's participation in Title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 668.15, over the servicer.

(e) *Independent audits.* (1) A third-party servicer shall arrange for an independent audit of its administration of the FFELP loan portfolio unless—

(i) The servicer contracts with only one lender or guaranty agency; and

(ii) The audit of that lender's or guaranty agency's FFEL programs involves every aspect of the servicer's administration of those FFEL programs.

(2) The audit must—

(i) Examine the servicer's compliance with the Act and applicable regulations;

(ii) Examine the servicer's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit of the servicer's first full fiscal year beginning on or after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) With regard to a third-party servicer that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, Appendix G.

(4) With regard to a third-party servicer that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with Office of Management and Budget (OMB) Circular A–133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

(f) *Contract responsibilities.* A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in § 682.414(a)(3)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

Subpart G—Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders and Schools

51. The title of subpart G is revised to read as set forth above.

52. Section 682.700 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party

servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA prescribed under the FFEL programs. These regulations apply to lenders that participate only in a guaranty agency program, lenders that participate in the FFEL programs, and third-party servicers that administer aspects of a lender's FFELP portfolio. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under section 432(h)(2) and (h)(3) of the Act.

(b) * * *

(1) (i) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act; or

(ii) To a determination that an organization fails to meet the standards in § 682.416;

* * * * *

53. Section 682.701 is amended by revising the definitions of *Limitation*, *Suspension*, and *Termination* to read as follows:

§ 682.701 Definitions of terms used in this subpart.

* * * * *

Limitation. The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension. The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination. (1) The removal of a lender's eligibility for an indefinite period of time—

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

54. Section 682.702 is amended by redesignating paragraph (c) as paragraph (d); adding a new paragraph (c); and removing "(c)" in paragraph (a) and adding, in its place "(d)" to read as follows:

§ 682.702 Effect on participation.

* * * * *

(c) A limitation imposes on a third-party servicer—

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

* * * * *

55. Section 682.703 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to—

* * * * *

56. Section 682.704 is amended by revising paragraphs (a)(1), (b), (c), and (d)(2)(ii) to read as follows:

§ 682.704 Emergency action.

(a) * * *

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA pertaining to the lender's portfolio of loans;

* * * * *

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d) * * *

(2) * * *

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

57. Section 682.705 is revised to read as follows:

§ 682.705 Suspension proceedings.

(a) *Scope*. (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice*. (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(8) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) *Hearing*. (1) If the lender or servicer does not request an oral hearing

but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender or servicer of the effective date of the suspension.

(2) If the lender or servicer requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's or servicer's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, (28 U.S.C. Appendix) is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender or servicer.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender or servicer of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender or servicer, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

58. Section 682.706 is revised to read as follows:

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender or servicer.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

59. Section 682.707 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

* * * * *

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the

FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

60. Section 682.708 is amended by revising paragraph (b) to read as follows:

§ 682.708 Evidence of mailing and receipt dates.

* * * * *

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

61. Section 682.709 is revised to read as follows:

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(Authority: 20 U.S.C. 1080, 1082, 1094)

62. Section 682.710 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

* * * * *

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

63. Section 682.711 is amended by revising paragraphs (a), (b)(1), (b)(2), (e), and the authority citation following the section to read as follows:

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) * * *

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

* * * * *

(e) (1) If the Secretary denies the lender's or servicer's request or allows reinstatement subject to limitations, the lender or servicer, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender or third-party servicer whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

64. The heading for part 690 is revised to read as set forth above.

65. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

66. Section 690.83 is amended by adding a new paragraph (e) to read as follows:

§ 690.83 Submission of reports.

* * * * *

(e) (1) Notwithstanding paragraph (a), (b), (c) (1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a, 1094, 1226a–1)

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April 29, 1994

Part IX

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AB83

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992, and certain technical changes made by the Cash Management Improvement Act Amendments of 1992, the Omnibus Budget Reconciliation Act of 1993, and the Higher Education Technical Amendments of 1993. The regulations amend the FFEL Program loan discharge provisions and enhance the ability of lenders and guaranty agencies to service and collect FFEL Program loans.

DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 682.202, 682.208, 682.402, 682.410, and 682.411. These sections will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

Subject to approval under the Paperwork Reduction Act, the following applicability dates also apply to certain provisions of these regulations:

Section 682.202(c), which reduces the amount of the origination fee charged on an FFEL Program loan, applies to loans for which the first disbursement is made on or after July 1, 1994, if the period of enrollment for which the loan is intended either includes that date or begins on or after that date.

Section 682.202(d), which reduces the amount of the insurance premium charged on an FFEL Program loan, applies to loans for which the first disbursement is made on or after July 1, 1994, if the period of enrollment for which the loan is intended either includes that date or begins on or after that date.

Section 682.410(b)(5)-(7), which requires guaranty agencies to warn defaulters that they may be subject to administrative wage garnishment and offset against federal or state income tax refunds, applies to claims paid by the agency on or after 120 days following the date of publication.

Section 682.411, which requires lenders to warn delinquent borrowers that they may be subject to administrative wage garnishment and offset against federal or state income tax refunds if they default on their loans, applies to loans on which the first day of delinquency is on or after 120 days following the date of publication.

FOR FURTHER INFORMATION CONTACT: George Harris, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4310, ROB-3), Washington, DC 20202-5449. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is amending 34 CFR part 682 to implement changes made to the HEA by Public Law 102-325, enacted July 23, 1992, as well as certain changes added by Public Law 103-66, enacted August 10, 1993 and Public Law 103-208, enacted December 20, 1993. These regulations seek to improve the efficiency of federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

On January 14, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 682 in the **Federal Register** (59 FR 2486). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Amendment to § 682.208 to provide for borrower notification when there is a servicing change (page 2488);
- Addition to § 682.402 to implement loan discharges if the student could not complete the educational program because the school closed (page 2491);
- Addition to § 682.402 to implement loan discharges if the student's eligibility to borrow was falsely certified by the school (pages 2488-2490);
- Addition to § 682.410 to implement administrative wage garnishment of borrowers who owe defaulted loans (page 2491).

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently, as discussed in those sections of the preamble that relate to specific sections of the regulations.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs, and do not interfere with State, local, and tribal governments in the exercise of their governmental functions. Substantive revisions to the Notice of Proposed Rulemaking.

Section 682.202 Permissible Charges by Lenders to Borrowers

- The Secretary has incorporated into the regulations the changes made by Public Law 103-66 and Public Law 103-208 to origination fees and insurance premiums. Section 682.202(a)(6) of the proposed regulations, which discussed the refund of excess interest paid on Stafford loans, has been deleted. Those refund provisions were substantially amended by Public Law 103-208, and will be the subject of future proposed regulations.

Section 682.208 Due Diligence in Servicing a Loan

- The Secretary has incorporated into the regulations the changes made by Public Law 103-208 to the notification requirements that apply to the sale or transfer of a loan.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

- The Secretary has expanded the definition of what constitutes a school's "false certification of a student's eligibility to borrow" to include cases where a school signed a putative borrower's name on the loan application or the promissory note. The Secretary will also provide relief under these procedures to borrowers who

demonstrate that the school, without authorization by the borrower, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, if the student did not receive the loan proceeds, either by actual delivery of the funds or by application of the loan proceeds to institutional charges owed to the school.

- The Secretary has partially deleted the requirement that, as a condition of eligibility for a closed school or false certification discharge, a borrower must assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) from any public fund. However, a borrower will still be required to assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) from any private fund, including the portion of a public fund that represents funds received from a private party.
- The Secretary has deleted the requirement for the student to certify that, as a condition of eligibility for a false certification discharge, he or she was certified by the school on the application for the loan as an eligible student.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

- The regulations have been revised to incorporate the Secretary's guidance sent to guaranty agencies in July 1993 concerning (Pub. L. 102–589). That guidance explained that a guaranty agency was no longer required to assign loans to the Secretary for federal income tax refund offsets.
- The Secretary has deleted the provision of the proposed regulations that would have made a self-employed borrower subject to wage garnishment.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 40 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject, with references to the appropriate sections of the regulations. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

Section 682.202 Permissible Charges by Lenders to Borrowers

1. *Comment:* A number of commenters noted that Public Law 103–66 and Public Law 103–208 made changes to the statute upon which the NPRM was based. The commenters recommended that regulatory provisions applying to borrower interest rates, refunds of excess interest paid, origination fees, and insurance premiums, should be updated to reflect current law. Some commenters recommended that a separate NPRM be issued to address the complex changes made by Public Law 103–208 to the provisions that mandate the refunding of excess interest.

Discussion: To the extent that such changes can be readily made, the Secretary agrees that they should be. The Secretary has decided to issue a new notice of proposed rulemaking to implement the changes affecting the refund of excess interest paid, which had been the subject of § 682.202(a)(6) of the proposed regulations.

Change: The final regulations have been amended to incorporate the changes made by Public Law 103–208 to loan origination fees and insurance premiums. Interest rate changes will be in a subsequent NPRM. Section 682.202(a)(6) of the proposed regulations has been deleted, however, the Secretary has reserved that paragraph in these final regulations as the location for future regulations relating to the refunding of excess interest that is required by section 427A(i) of the HEA.

Section 682.202(c)(2)

2. *Comment:* Some commenters objected to the requirement that a lender must charge an unsubsidized Federal Stafford Loan borrower a 6.5 percent origination/insurance fee. The commenters believed that the lender should have an option to charge the borrower a lesser amount, as is permitted for a subsidized Federal Stafford Loan.

Discussion: Prior to Public Law 103–66, section 428H(f)(1) of the HEA required the lender to charge an unsubsidized Federal Stafford Loan borrower a 6.5 percent origination/insurance fee. Public Law 103–66 split the combined origination/insurance fee into two separate components: a 3 percent origination fee that is required to be charged to the borrower, and a 1 percent insurance premium that may be charged to the borrower. The origination and insurance fees applicable to a subsidized Federal Stafford Loan were also reduced by Public Law 103–66 to 3 percent and 1 percent respectively. However, the HEA continues to permit a lender to charge a subsidized Federal Stafford Loan borrower a lesser amount than the maximum loan origination fee, whereas no similar option exists for an unsubsidized Federal Stafford Loan origination fee.

Change: The final regulations have been revised to incorporate the reduced fees resulting from Public Law 103–66.

Section 682.202(c)(4)

3. *Comment:* Some commenters noted a conflict between § 682.202(c)(1) which stated that a lender may charge a borrower an origination fee on a subsidized Stafford loan, whereas § 682.202(c)(4) mandated that the lender shall deduct a *pro rata* portion of such fee from each disbursement of the loan proceeds.

Discussion: The Secretary agrees with the commenters.

Change: Section 682.202(c)(4) has been amended to clarify that the *pro rata* deduction requirement applies only if the lender has chosen to charge an origination fee to the borrower.

Section 682.208 Due Diligence in Servicing a Loan

4. *Comment:* A number of commenters favored an expansion in the notification requirements pertaining to an assignment of a loan or a change in the identity of the party to whom the borrower sends payments or communications concerning the loan. The commenters believed that the notice required to be sent by the holder of the loan should apply to all borrowers, and not be limited to only those borrowers in the grace or repayment periods. Some commenters also noted that Public Law 103–208 made two changes to section 428(b)(2)(F) of the HEA: (1) The transferee (instead of the transferor) is now required to notify the guaranty agency when a loan is sold or transferred; and (2) the transferor and the transferee may now notify the borrower of the sale or transfer of a loan either jointly or separately (instead of only separately).

Discussion: Section 428(b)(2)(F) of the HEA states that the notification requirements "* * * shall only apply if the borrower is in the grace period * * * or is in repayment status."

Change: No changes are made with respect to the commenters' first comment. The final regulations have been revised to incorporate the notification changes resulting from Public Law 103–208.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

Section 682.402(a)

5. *Comment:* A number of commenters objected to the requirement that, in general, the borrower's loan must be a legally enforceable debt under applicable law by the holder of the loan to qualify a guaranty agency for a reinsurance payment under the closed school and false certification discharge provisions. The commenters believed that students should have their loans discharged, and the Secretary should reimburse guaranty agencies for such discharges, even if the borrower's debt is legally unenforceable by the holder of the loan. Of particular concern to some commenters were cases where the school signed the borrower's name on the loan documents or check. While the commenters generally recognized that the borrower technically does not owe the amount of the unenforceable debt, they were concerned that borrowers may not have the resources to pursue a legal or administrative determination of loan enforceability. The commenters also believed that even if the borrower did pursue that avenue, it could take many years to reach a resolution, during which the borrower would be subject to collection activity, damaged credit rating, and if in default, would be considered to be ineligible for additional federal student financial aid.

In a related area, some commenters expressed concern that, under current federal regulations, a borrower would not receive a closed school or false certification discharge if federal reinsurance on the loan had been lost because of violations of due diligence or other programmatic requirements committed by the lender or the guarantor. The commenters believed that Congress intended to help a borrower who was victimized by a school's closing or false certification of eligibility to borrow, events that are beyond the control of the borrower.

Discussion: The Secretary is persuaded that the term "falsely certified," as used in section 437(c)(1) of the HEA, should be defined to include certain cases where a school signed the borrower's name on the loan application or promissory note. The definition of the term "falsely certified" is extensively discussed in response to comment 48. Because of the similarity of such cases to those involving the execution of the application or note by the school in the name of the borrower, the Secretary concluded that cases in which the school improperly endorsed the borrower's signature on the loan check or the authorization for electronic funds transfer should also be addressed under these regulatory procedures, although such misconduct is not by itself a false certification. Under these final regulations, therefore, the Secretary will provide relief to borrowers in cases of unauthorized endorsements, but except for the instances in which the school both falsely created a loan application or promissory note for a student and then endorsed the student's name on the loan check, the lender is responsible for ensuring the authenticity of a borrower's signature on the lender's loan check, and should continue to bear the risk of an improper endorsement. In those instances, although a borrower may under the procedure as modified here receive a discharge of any obligation to repay that portion of a loan disbursed by a check which he or she neither endorsed nor received the proceeds of, the lender will not be permitted to receive or retain a claim payment for that amount. Because the Secretary considers the lender to have not had routine access to the written authorization for electronic funds transfer, on the other hand, the lender would not have occasion to know of an unauthorized execution of that authorization in the name of the borrower, and would not be held at risk for such unauthorized disbursements under these procedures.

The Secretary also agrees that the loss of federal reinsurance on the loan due to violations of due diligence or other programmatic requirements committed by the lender or the guarantor should not prevent an eligible borrower from receiving a closed school or false certification discharge. In such cases, the Secretary will use his authority pursuant to § 682.406(b) to waive his right to refuse to make a reinsurance payment on the loan. Thus, (except in the case of a falsely endorsed check, as noted above) a lender may receive a claim payment and a guaranty agency may receive a reinsurance payment on a loan for which an eligible borrower would qualify for a closed school or false certification discharge, even though violations of program requirements committed by the lender or guarantor may have otherwise sufficed to cause federal reinsurance on the loan to have been lost.

During the last few years, Congress and the Secretary have taken steps to combat unscrupulous individuals and program participants who have used the FFEL Program to exploit innocent students and taxpayers. The discharge of loans owed by the innocent victims is consistent with those actions. The Department intends to pursue the individuals and organizations who caused this situation so that the taxpayer can be reimbursed, and future students are protected.

Change: As will be further discussed in response to comment 48, the Secretary has expanded the definition of what constitutes a school's "false certification of a student's eligibility to borrow" to include a loan for which the school signed the name of an innocent victim on the application for the loan or the promissory note. The regulations will also provide relief in cases in which the borrower signed the loan application or promissory note, but the school signed the borrower's name on a loan check or authorization for electronic funds transfer, providing that the student did not receive, directly or indirectly, the benefits of the loan proceeds disbursed by that loan check or by virtue of the authorization for electronic funds transfer signed by the school.

6. *Comment:* Some commenters believed that information concerning closed school or false certification discharges should be made available to the borrower at the time the loan is made or while the student is in school. The commenters believed that this important information may be easily overlooked by or not reach the borrower after the school has closed or the student has withdrawn.

Discussion: This information is made available to the student in the common application/promissory note used by all guaranty agencies. In addition, if a borrower has questions concerning his or her loan obligation, a lender is required under § 682.208(c)(1) to respond within 30 days after receipt of an inquiry from the borrower or any endorser on a loan.

Change: None.

Section 682.402(b)(1)

7. *Comment:* Some commenters believed that the regulations should state that a discharge of a Federal PLUS or Federal Consolidation Loan because of a borrower's death would apply only if both co-makers of the loan died.

Discussion: This was stated in § 682.402(a)(2) of the proposed regulations. Section § 682.402(b)(1) addresses the loan obligation of an individual borrower who dies.

Change: None.

8. *Comment:* Some commenters recommended that the regulations state that the discharge of a Federal PLUS Loan because of the student's death applies only to student deaths occurring on or after July 23, 1992.

Discussion: The Secretary agrees that clarification is needed to reflect the effective date of section 437(d) of the HEA.

Change: The final regulations have been revised accordingly.

Section 682.402(c)(1)

9. *Comment:* Some commenters objected to the requirement that a Federal Consolidation Loan borrower must provide the disbursement dates of the underlying loans if the borrower requests a loan discharge for total and permanent disability based on a condition that pre-dated the Consolidation Loan. The commenters believed that this information is present in the borrower's Consolidation Loan file and the borrower should not be required to submit information already in the possession of the lender.

Discussion: The regulations are designed to cover all cases, including those in which the information may not be present in the borrower's loan file, and it may be necessary in some cases, for the borrower to provide this documentation. For example, the lender's information may be incomplete or destroyed due to fire, flood, theft, *etc.* However, in other cases where the lender already possesses this information in the borrower's loan file, the Secretary agrees that the borrower should not be required to provide the same documentation.

Change: Section 682.402(c)(1) has been revised to specify that the borrower's requirement to provide such documentation only applies if the lender does not already possess it.

Section 682.402(d)(1)(i)

10. *Comment:* Some commenters were confused by references to "the loan" and thought that a borrower with multiple loans would not be completely covered under the closed school loan discharge provisions.

Discussion: In general, regulatory language is more precise if it is based on the singular form of a noun. In the case of a closed school loan discharge, this permits each loan to be evaluated individually, and not be dependent on factors associated only with other loans. If the borrower qualifies for a discharge of more than one loan, then each loan will be discharged.

Change: None.

11. *Comment:* Some commenters believed that a borrower should be eligible for a closed school loan discharge for the portion of a Federal Consolidation Loan that repaid a loan that would have otherwise been discharged under the closed school provisions.

Discussion: The Secretary agrees with the commenters. The Secretary has been given authority pursuant to section 437(c)(1) of the HEA to "* * * discharge the borrower's liability on the loan * * *" if the student could not complete the program in which the student was enrolled because of the school's closure. Because section 437(c) provides for discharge of loans because of events that occur before the borrower enters repayment, the borrower's liability on the loan is the amount outstanding at that time, before the borrower enters repayment. If the borrower repays some or all of that amount, the discharge would be ineffective unless it includes relief from that liability through reimbursement for the amounts paid on the loan, and those amounts include amounts borrowed through a Consolidation Loan. The Secretary believes that the borrower's Consolidation Loan should be credited for the amount of the closed school loan discharge that would have been applicable to the borrower's loan before it was consolidated.

Change: The final regulations have been revised accordingly.

12. *Comment:* Some commenters believed that the 90-day period prior to a school's closing during which a student who withdrew would be eligible for a loan discharge is too short for many students who attended correspondence schools. The commenters noted that such students frequently are considered "withdrawn" as of the date of the last lesson submitted by the student if the student did not submit the next scheduled lesson in accordance with the schedule of lessons established under § 682.602. However, the school may not have been considered to have officially closed until more than 90 days have elapsed from the date the student would be considered to have withdrawn under § 682.605(b)(3). The commenters observed that in many cases, it was the school that withdrew from the student by its failure to grade lessons or provide subsequent lessons, or to otherwise communicate with a student who attempted to learn if the school was still operating. The commenters believed that correspondence students, unlike other students who attended a school at a school's actual location, are not in a position to see an obvious deterioration in the school's ability to provide education to students.

Discussion: The Secretary believes that the 90-day period generally is sufficient for all categories of students. The Secretary notes that correspondence students may actually be in a better position than other students to realize that a school's ability to provide training and services is deteriorating. The absence of communication from a correspondence school to a student is an unmistakable sign that the school is not fulfilling its part of the enrollment agreement with the student. Other types of schools may be able to effectively camouflage their deteriorating capabilities and prevent students from seeing the true state of the school's fiscal and administrative situation, but a correspondence school student cannot be so easily deceived. The lack of communication from a school is a clear fact that speaks for itself. However, the Secretary agrees with the commenters that in some unique circumstances an extension of the 90-day period may be appropriate.

Change: The final regulations have been revised to include a provision for the Secretary to extend the 90-day period if he believes an extension is appropriate in a particular case.

Section 682.402(d)(1)(ii)(A)

13. *Comment:* Some commenters noted that schools that close will frequently phase-out their operations by sequentially eliminating individual programs even though the school remains open. The commenters believed that by linking a borrower's eligibility for a loan discharge to the date that the school ceased to provide educational instruction in all programs, the regulations would penalize a borrower who withdrew from school because of a terminated or deteriorated program earlier than 90 days before the school officially closed.

Discussion: The Secretary has been given authority pursuant to section 437(c)(1) of the HEA to discharge the borrower's liability on the loan if the student could not complete the program "* * * due to the closure of the institution.* * *" The Secretary has no authority to discharge the borrower's loan obligation if the student's program was terminated but the school did not close.

Change: None.

14. *Comment:* Some commenters did not understand the reference to "the designated agency in the state in which the school is located." The commenters asked if the agency making the determination that a school had closed would be the guaranty agency, the state school licensing agency, or some other agency.

Discussion: The Secretary understands the commenters' concerns and has concluded that he is in the best position to evaluate the information provided by various sources concerning whether a school has closed and the

date of closure. Therefore, the determination of a school's closure date will be made by the Secretary and communicated to FFEL Program participants.

Change: The regulation has been amended to read "A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;"

Section 682.402(d)(1)(ii)(C)

15. *Comment:* Some commenters recommended that the regulations clarify that only a loan made for attendance at an *eligible* school could be discharged under the closed school loan discharge provisions. Some commenters also wanted the regulations to make it clear that the discharge provisions would apply only if the branch or location of the school where the student actually attended was itself "eligible."

Discussion: The closed school loan discharge authorized in section 437(c)(1) of the HEA is not restricted only to a loan made for attendance at an eligible school. The Secretary believes that Congress was aware of instances in which a school or its branch may have lost eligibility, but the school continued to certify loan applications under an eligible school identification code. The Secretary believes this is the reason why there is no requirement in section 437(c)(1) of the HEA that links a borrower's eligibility for a closed school loan discharge to only a loan certified by an eligible school.

Change: None.

Section 682.402(d)(2)(iv)

16. *Comment:* Some commenters recommended that the regulations require the holder of a loan discharged under the closed school loan discharge provision to forward the original promissory note marked "canceled" or "satisfied in full" to the borrower within 30 days after discharging the borrower's loan obligation.

Discussion: A loan that is discharged due to the borrower's death, permanent and total disability, or bankruptcy, is considered "paid in full" for the purposes of § 682.414(a)(2). The Secretary will add a closed school loan discharge to the definition of the term "paid in full" found in § 682.414(a)(2), but does not believe it is necessary to otherwise amend the requirements pertaining to the return of promissory notes (found in § 682.414(a)(4) of the current regulations) in the manner recommended by the commenters. The return of a borrower's promissory note pursuant to a closed school discharge does not need to be accomplished any differently than the return of a borrower's promissory note pursuant to any other type of discharge.

Change: Section 682.414(a)(2) has been amended to add a closed school loan discharge.

Section 682.402(d)(3)

17. *Comment:* Some commenters recommended that the Secretary prescribe a standardized form for the closed school loan discharge application and associated sworn statement from the borrower.

Discussion: The Secretary agrees that this would be helpful. Pursuant to the requirements of section 432(l) of the HEA, the Secretary will consult with FFEL participants to develop a standardized form.

Change: None.

18. *Comment:* Some commenters objected to the requirement that a borrower who requests a closed school loan discharge must submit the sworn statement described in the regulations. The commenters believed the sworn statement is unnecessary in cases where the holder of the loan or the guaranty agency has reliable information in their possession showing that the borrower was in attendance at the school when it closed or within 90 days before it closed. The commenters believed the borrower's loan obligation should be discharged based on those existing records.

Discussion: The Secretary believes the borrower's sworn statement is necessary to adequately protect the interests of the taxpayers. The information provided on the borrower's sworn statement is not limited to the isolated historical record of the borrower's attendance at the closed school. For example, the borrower must state whether he or she took advantage of a teach-out or transferred academic credits from the closed school to another school. The borrower must also agree to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with § 682.402(d)(4). This information, and the borrower's agreement to cooperate, will not be in the possession of the guaranty agency and must be obtained in the borrower's sworn statement.

Change: None.

Section 682.402(d)(3)(ii)(A)

19. *Comment:* Some commenters requested clarification of whether the closed school loan discharge applied to a loan that was partially disbursed on or after January 1, 1986.

Discussion: The Secretary has been given authority pursuant to section 437(c)(1) of the HEA to discharge the borrower's liability on a loan "* * * received, on or after January 1, 1986 "* * *" if the student could not complete the program due to the closure of the school. For purposes of the closed school loan discharge, the Secretary will consider the borrower's entire loan eligible if any part of it was disbursed by the lender on or after January 1, 1986.

Change: The final regulations have been revised to incorporate this clarification.

Section 682.402(d)(3)(ii)(C)

20. *Comment:* Some commenters believed that a borrower who was unable to transfer all of the academic credits or hours earned at the closed school to another school should qualify for a partial loan discharge.

Discussion: If a student chooses to transfer any amount of academic credits or hours earned at the closed school to another school, and as a result of that action is able to complete the program of study that the student was enrolled in at the closed school, the student would not meet the requirement contained in section 437(c)(1) of the HEA that restricts a closed school loan discharge to a student "* * * unable to complete the program * * *" because of the school's closing. Thus, there would be no statutory basis for discharging the borrower's loan obligation.

Change: None.

21. *Comment:* Some commenters believed that a borrower who transferred academic credits or hours earned at the closed school to another school should not qualify for a discharge if the borrower enrolled in a different program of study at the new school or enrolled in a similar program but quickly withdrew.

Discussion: The Secretary believes that the borrower is entitled to a loan discharge under the HEA in any case in which a student's program of education is disrupted by the closing of the school to the extent that the student does not, for any reason, complete the program. The presumption must be that the school's closing directly hindered the student's achievement of his or her educational goals.

Change: None.

22. *Comment:* Some commenters recommended that the regulations define the term "teach-out at another school." The commenters believed that the absence of a definition would result in widespread confusion as to what constitutes a "teach-out" for purposes of a closed school loan discharge. The commenters suggested that the key elements of a teach-out are: (a) No charges additional to the original

program cost; (b) identity of subject matter taught; (c) geographic proximity between the original and teach-out schools; (d) demonstrated compatibility of program structure and scheduling (*e.g.*, student is able to begin the teach-out within a reasonable time after the school closure, and the completion dates, class times, and instructional methodology are comparable); and (e) review and approval by the state licensing agency.

Discussion: The Secretary believes that a prescriptive regulatory definition of "teach-out" is unnecessary. The Secretary notes that because a student may decline to complete the program through a teach-out at another school for any reason, it is therefore reasonable to conclude that a student who chooses to participate in a teach-out and completes the program, has demonstrated an acceptance of those teach-out conditions. In short, a student can be protected from being forced to accept what he or she believes to be an onerous teach-out condition by simply declining the teach-out. A student who, even though inconvenienced, chooses to complete his or her program through a teach-out, has received value from the loan and needs no loan discharge.

The Secretary asks interested parties to submit information to him concerning the actual costs paid by students who completed their programs through teach-outs. The Secretary will evaluate those costs to determine if the regulations should be revised in the future to permit a discharge based on certain circumstances.

Change: None.

Section 682.402(d)(3)(iv)

23. *Comment:* Some commenters, while believing that borrower cooperation is important in an enforcement action undertaken against a school or other related parties, were concerned that a borrower may be unable to take time away from work, home, or other activities to travel to multiple court appearances needed to assist the Secretary or his designee in the enforcement action. The commenters believed that a borrower should be required to assist in an enforcement action only to the extent practicable for the borrower.

Discussion: It would not be in the interests of the Secretary or the taxpayer to make unreasonable demands on the borrower when pursuing an enforcement action. It would equally not be in the interests of the Secretary or the taxpayer to create an opportunity for a borrower to frustrate the Secretary's enforcement action by claiming that he or she was unavailable to testify. The use of the word "cooperate" in the regulations implies a process of two or more parties reasonably working together toward a common goal, and needs no further elaboration.

Change: None.

Section 682.402(d)(5)(i)

24. *Comment:* Some commenters opposed the requirement that a borrower must assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) from any private or public fund. The commenters were particularly concerned with the effect they believed this requirement would have upon state tuition recovery funds. The commenters also believed that the Secretary has no statutory right to any claim against a state tuition recovery fund because the HEA fails to specifically provide the secretary with that right. The commenters noted that section 437(c)(2) of the HEA limits the assignment to the Secretary of a borrower's right to a loan refund only to the borrower's rights "* * * against the institution and its affiliates and principals." The commenters contended that there is no indication that Congress intended the Secretary to have access to state funds or to require states to participate economically in closed school loan discharges. The commenters believed that the HEA's omission of state tuition recovery funds (or any other private or public fund) reflects the principal of statutory construction "*expressio unius est exclusio alterius*" (the expression of one thing is the exclusion of another).

Discussion: The Secretary believes that the statutory authority permitting the assignment to the Secretary of a borrower's right to recover a loan refund from the school, its affiliates, or principals clearly contemplates the recovery of refunds from private funds. A private fund is funded by parties who are directly or indirectly associated with the school, and the HEA intends that the Secretary shall have a legal claim to a private tuition recovery fund in the event of a school closure. Although they may be categorized as "public funds," it is the Secretary's understanding that many state tuition recovery funds rely in whole, or in part, on private funding provided by a school, its owners, or affiliates. Therefore, the Secretary believes that a borrower's assignment of recovery rights against a public fund is applicable only to the extent that a state tuition recovery fund or any other such public fund contains private money. The public money in those funds should not be considered.

Change: The final regulations have been revised to exclude the portion of a public fund that represents public money.

25. *Comment:* Some commenters questioned why a borrower must assign to and relinquish in favor of the Secretary any right to a *loan* refund (up to the amount discharged) with respect to the enrollment agreement for the program for which the loan was received. The commenters believed that the assignment of a borrower's rights pursuant to the enrollment agreement would not gain anything for the Secretary. They were concerned that the borrower would be forced to surrender some rights (unspecified) unnecessarily, despite the statement in § 682.402(d)(5)(iii) that permits the borrower (or student) to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

Discussion: The requirement that the borrower must assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) does not preclude the borrower from pursuing legal action against the school or any related party with respect to the terms of the student's enrollment agreement with the school, or with respect to any other grievance the student may have against the school or those parties.

Change: None.

Section 682.402(d)(6)(i) and (ii)

26. *Comment:* Some commenters believed it was confusing to link guaranty agency requirements to a date other than the actual date that a school closed.

Discussion: In some cases, a guaranty agency may not become aware of a school's closure until significantly after the date the school actually closed. Therefore, the only workable way to create timeframes for guaranty agencies to perform certain actions, such as notifying lenders to suspend collection efforts, would be to tie those timeframes to the date that the agency first became aware, or was notified by the Secretary, that a school had closed.

Change: None.

Section 682.402(d)(6)(i)(C)

27. *Comment:* Some commenters asked why August 29, 1994 was proposed as the effective date for this provision.

Discussion: As a requirement for publishing the NPRM in the Federal Register, a specific date had to be used instead of a generic reference such as "prior to the effective date of these regulations." Therefore, August 29, 1994

was the Secretary's estimation (made prior to the date the NPRM was published) of when the final regulations would be effective.

Change: This date, and all other dates based on it, will be revised when the actual effective date is known.

Section 682.402(d)(6)(i)(D)

28. *Comment:* Some commenters believed that the regulations should require a guaranty agency to provide loan-specific information to lenders so that lenders can more effectively suspend collection efforts against individuals with respect to loans made at closed schools. The commenters noted that a lender would not be able to identify a PLUS borrower if the guarantor notified the lender of the school code and closure date only.

Discussion: The Secretary believes that because the loan application retained by the lender will have the name of the school and the period of enrollment for which the loan was made, the lender should be able to determine which individuals it should suspend collection efforts against once the lender is notified of the date a school closed. The Secretary encourages a guaranty agency to provide assistance to a lender that believes it is unable to identify the appropriate PLUS borrowers.

Change: None.

Section 682.402(d)(6)(i)(E)

29. *Comment:* Some commenters recommended that a guaranty agency be required to suspend collection activities on loans that it holds for borrowers who the agency believes may be eligible for a closed school loan discharge. The commenters noted that this is a requirement in the analogous regulation in § 682.402(e)(6)(iv) and (v) with respect to false certification discharges.

Discussion: The Secretary had intended that this requirement would be in the NPRM.

Change: The regulations have been amended to require a guaranty agency to take the same actions with respect to a borrower who may be eligible for a closed school loan discharge as the agency is required to take under § 682.402(e)(6)(iv) and (v) with respect to a borrower who may be eligible for a false certification discharge.

30. *Comment:* Some commenters noted that § 682.402(d)(6)(i) of the proposed regulations did not specify what a guaranty agency would be required to do upon the receipt of a complete application from a borrower whose loan is held by the guaranty agency. The commenters recommended that the procedures required under § 682.402(d)(6)(ii) should also apply to § 682.402(d)(6)(i).

Discussion: The Secretary agrees that the requirement for notifying the borrower that he or she does not qualify for a loan discharge should be in both § 682.402(d)(6)(i) and § 682.402(d)(6)(ii).

Change: The final regulations have been revised to add this requirement.

Section 682.402(d)(6)(i)(F)

31. *Comment:* Some commenters objected to the requirement that a guaranty agency must consult with representatives of the closed school, the school's licensing agency, the accrediting agency, and other appropriate parties to learn the current address of borrowers whose loans are held by the guaranty agency, and who have been identified as potentially eligible for a closed school loan discharge. The commenters believed that the skiptracing efforts required under § 682.410(b)(6) are more likely to be successful than contacts with the closed school and its related agencies.

Discussion: The Secretary believes that special efforts should be made to contact borrowers who may be eligible for a closed school loan discharge, but whose current address is unknown. Therefore, the interests of fairness to all borrowers justifies the additional skiptracing efforts required by the regulations.

Change: None.

Section 682.402(d)(6)(ii)(C)

32. *Comment:* Some commenters believed that a guaranty agency should not be the party that mails a discharge application to a borrower identified under this subparagraph of the regulations. Instead, the commenters believed it would be more appropriate for the guaranty agency to mail the application package to the lender or servicer, who would then mail it to the borrower. The commenters believed that this change would assist the lender in determining when to cease collections and would also avoid any borrower confusion.

Discussion: This provision of the proposed regulations requires a guaranty agency to "* * * review *its records* of loans that *it holds* * * *" (emphasis added). The lender is not the holder of loans held by the guaranty agency. The guaranty agency will mail the application package to a borrower whose loan is held by the agency. For loans held by a lender, the lender will mail the application package to the borrower.

Change: None.

Section 682.402(d)(6)(ii)(D)

33. *Comment:* Some commenters noted that, in the case of a loan held by the guaranty agency, the proposed regulations did not require the guaranty agency to inform a borrower that the borrower's loan obligation has been discharged.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to require a guaranty agency, in the case of a borrower whose loan is held by the agency, to send written notification to the borrower no later than 30 days after the agency determines that the borrower has satisfied all of the conditions required for discharge of the loan.

Section 682.402(d)(6)(ii)(E)

34. *Comment:* Some commenters believed it is counterproductive to set time limits that the borrower must meet if there is no penalty incurred by a borrower who fails to comply with those time limits. The commenters recommended a deletion of the prohibition against a borrower being denied a closed school loan discharge solely on the basis of the borrower's failure to meet any time limits set by the lender, guaranty agency, or Secretary.

Discussion: There are no time-driven requirements with respect to the submission of information that a borrower must meet to qualify for a closed school loan discharge. Perhaps the commenters misinterpreted the lender's requirement in § 682.402(d)(7)(ii) to resume collection efforts against a borrower who failed to submit, within 60 days, the written request and sworn statement necessary for loan discharge. However, that requirement only has the effect of reactivating collection efforts, and does not disqualify the borrower from later submitting a complete application for loan discharge.

Change: None.

Section 682.402(d)(7)(i)

35. *Comment:* Some commenters believed that a lender should not be permitted to suspend collection efforts against a borrower for whom the lender has received reliable information from a source other than a guaranty agency or the Secretary indicating that the borrower may be eligible for a closed school loan discharge.

Discussion: The Secretary does not believe that either he or a guaranty agency will always be the first to know that a specific borrower may be eligible for a closed school loan discharge. For example, the school itself could notify

the lender that it had closed, or a legal aid group working on behalf of students could notify the lender of students who it believed were eligible. The Secretary believes that it would be in the best interests of the borrower to permit a lender to exercise its judgment concerning the reliability of the sources of information it receives.

Change: None.

Section 682.402(d)(7)(ii)

36. *Comment:* Some commenters believed that a lender that resumes collection activity against a borrower who fails to submit the documentation required for a closed school loan discharge should be required to grant forbearance to the borrower to absolve the borrower of any delinquency status existing on the loan, including delinquency that occurred before the date the lender suspended collection activity. The commenters believed that the borrower's delinquency is generally the result of the borrower's inability to pay due to circumstances caused by the school.

Discussion: The Secretary believes there is no reason to conclude that a borrower who did not qualify for a closed school loan discharge should, nevertheless, be presumed to have been harmed by the school to the extent that the borrower could not comply with the terms of his or her repayment agreement with the lender.

Change: None.

37. *Comment:* Some commenters believed the 60-day administrative forbearance period permitted while a lender awaited the borrower's submission of documentation is too short. The commenters believed that up to 90 days would be necessary to address the borrower's questions and for the borrower to submit documentation to the lender.

Discussion: A 60-day period is the standard administrative forbearance period permitted for purposes of awaiting documentation for other purposes *e.g.*, death, disability, or bankruptcy cancellations. The Secretary believes that 60 days is more than adequate for the borrower to submit the request for discharge and sworn statement for a closed school discharge.

Change: None.

Section 682.402(d)(7)(iii)

38. *Comment:* Some commenters objected to the requirement that a payment received by the lender from or on behalf of the borrower after the lender filed a claim on the loan with the guaranty agency must be forwarded to the guaranty agency within 30 days of its receipt. The commenters contended that the guaranty agency is not the legal holder of the loan until it pays a claim, and therefore has no right to the payment.

Discussion: The Secretary sees no benefit in having the borrower's payment in the possession of the party that has forwarded other loan related documents to the guaranty agency. The Secretary is aware of at least two ways for a lender to forward the borrower's payment to a guaranty agency so that it can be applied to the borrower's outstanding loan balance: the lender could cash the borrower's check and forward its own check payable to the guaranty agency on behalf of the borrower, or the lender could forward the borrower's original check to the agency and the agency could hold the check until it paid the lender's claim.

Change: None.

Section 682.402(d)(7)(iv)

39. *Comment:* Some commenters believed that in the case of a claim filed by a lender, the guaranty agency, not the lender, should notify the borrower that a closed school loan discharge has been granted.

Discussion: The borrower had an obligation to repay the loan to the lender. The borrower has no obligation to repay the loan (it has been discharged) to the guaranty agency. The borrower should be informed by the party to whom the borrower had been obligated (the lender, if the claim was filed by the lender, or the guaranty agency, if the borrower's loan was held by the guaranty agency) that the borrower's obligation to repay the loan to that party has been discharged.

Change: None.

40. *Comment:* Some commenters noted that the proposed regulations did not specify the actions that a lender must take when it is informed by a guaranty agency that a borrower's request for a closed school discharge has been denied.

Discussion: The Secretary had intended that the procedures that applied in the case of a false certification request would apply to a closed school claim also.

Change: The final regulations have been revised to specify in § 682.402(d)(7)(v) the responsibilities of a lender when it is notified by a guaranty agency that a borrower's request for a closed school discharge has been denied.

Section 682.402(e) False Certification by a School of a Student's Eligibility to Borrow

41. *Comment:* Some commenters requested the Secretary to specifically state in the regulations what the effect of a false certification discharge would be on a school's cohort default rate.

Discussion: This issue would be more appropriately addressed in the definition of a school's cohort default rate in 34 CFR Part 668. While the Secretary does not believe that a school that falsely certified a borrower's eligibility should be allowed to benefit from that false certification by having its default rate reduced as a consequence, he is studying this issue to determine the appropriate treatment of such cases, and will make a decision when information concerning actual cases of false certification discharges is available.

Change: None.

Section 682.402(e)(1)

42. *Comment:* Some commenters believed that a parent should not have a Federal PLUS Loan discharged if the school falsely certified the eligibility of the student for whom the parent obtained the PLUS Loan. The commenters believed that only loans obtained directly by the student should be discharged under this section.

Discussion: Section 437(c)(1) of the HEA was amended by (Pub. L. 103–208) to permit a parent to receive a discharge of a PLUS Loan if the school falsely certified the eligibility of the student for whom the parent obtained the PLUS Loan.

Change: None.

43. *Comment:* Some commenters requested clarification of whether the false certification discharge applied to a loan that was partially disbursed on or after January 1, 1986.

Discussion: The Secretary has been given authority pursuant to section 437(c)(1) of the HEA to discharge the borrower's liability on a loan "* * * received, on or after January 1, 1986 * * *" if the student's eligibility to borrow was falsely certified by the school. For purposes of the false certification discharge, the Secretary will consider the borrower's entire loan eligible if any part of it was disbursed by the lender on or after January 1, 1986.

Change: The final regulations have been revised to incorporate this clarification.

44. *Comment:* Some commenters objected to the restriction that a false certification discharge would only apply if the false certification was made by an "eligible" institution. The commenters believed that the HEA intended the false certification discharge provision to apply to certifications made by both "eligible" and "ineligible" schools.

Discussion: This was discussed in detail on page 2490 of the NPRM published on January 14, 1994 (FR 59, No. 10). The Secretary has been given authority pursuant to section 437(c)(1) of the HEA to discharge the borrower's liability on a loan if the student's eligibility to borrow "* * * was falsely certified by the *eligible* institution * * *." (emphasis added.) The statute prescribes the scope of the discharge for false certification under section 437(c) as extending to those instances in which the "student's eligibility to borrow under this part was falsely certified by the *eligible institution* * * *." 20 U.S.C. 1087(c)(1).

The commenters proposal would have the effect of ignoring this language, which on its face limits relief to individuals whose personal eligibility status was falsely certified, rather than to those who contend that they were ineligible because the school at which they were enrolled was not an "eligible institution." This limitation embodies a congressional choice to exclude those grounds that were really challenges to the eligibility status of the school itself, and nothing in the language or the legislative history suggests that this limitation is inadvertent or unintended. Moreover, institutional eligibility rests directly and indirectly on a host of qualifications. The lack of one or more of these qualities in a school mistakenly determined to be eligible by the Department would, under the commenters' view, suffice to make eligible for discharge *all* borrowers enrolled at the institution while the deficiency persisted—a period that could stretch over several years—regardless of whether that deficiency related to the adequacy of the training and skills provided to the borrower.

The text itself and the legislative history show no intention of such a broad and costly view of the discharge provision. The Secretary does not, however, consider borrowers who attended schools that allegedly lacked eligibility to be barred by that alleged deficiency from relief under the false certification provision, but merely that the falsity on which they would seek relief must relate to a certification about their personal eligibility, and not that of the allegedly ineligible institution. The Secretary does not have the authority to discharge a loan that was made to a borrower for attendance at an ineligible school.

Change: None.

Section 682.402(e)(2)(ii)

45. *Comment:* Some commenters noted that lenders and guaranty agencies generally are not required to keep loan records longer than five years after the date a loan is paid in full. In light of the borrower's statutory right to a false certification discharge for loans received on or after January 1, 1986, the commenters recommended that the regulations prescribe the procedures to be followed by lenders and guaranty agencies who learn of borrowers who claim to have repaid their loans in full more than five years ago, but for whom the lender or guaranty agency has no existing records.

Discussion: In these cases, the Secretary expects the lender and guaranty agency will examine records reasonably available to them from other sources. If the lender or guaranty agency are unable to locate records of a loan paid in full more than five years ago, it would be the responsibility of a borrower who requests a loan discharge to provide the required documentation needed for a discharge of the loan.

Change: None.

Section 682.402(e)(2)(iv)

46. *Comment:* Some commenters recommended that the regulations require the holder of a loan discharged under the false certification discharge provision to forward the original promissory note marked "canceled" or "satisfied in full" to the borrower within 30 days after discharging the borrower's loan obligation.

Discussion: The discussion following comment 16 also applies to a false certification discharge.

Change: Section 682.414(a)(2) has been amended to add a false certification discharge.

Section 682.402(e)(3)

47. *Comment:* Some commenters recommended that the Secretary prescribe a standardized form for the false certification discharge application and associated sworn statement from the borrower.

Discussion: The discussion following comment 17 also applies to a false certification discharge.

Change: None.

Section 682.402(e)(3)(ii)(B)

48. *Comment:* Some commenters objected to the proposed regulation that would limit a false certification discharge to only those cases where a student admitted to a school on the basis of a purported ability to benefit from the school's training did not meet the applicable requirements for admission on the basis of ability to benefit. The commenters believed that the HEA did not envision any restriction as to what would constitute a school's false certification of a student's eligibility to borrow under the FFEL Program. Other commenters believed that some restrictions should apply, and proposed additional acts and certifications of a school that should be construed as false certifications. Some commenters were pleased with the regulations as written, and recommended no changes.

Discussion: The additional acts and certifications by a school that the commenters proposed were the same as those discussed in the NPRM published on January 14, 1994 (FR 59, No. 10). For the reasons stated on pages 2488–2490 of the NPRM, and for the additional reasons discussed earlier in response to comment 5, the Secretary believes that the term "falsely certified," when used for purposes of a false certification discharge, applies to cases involving a school's invalid certification that a student had the ability to benefit from the training offered by the school, or cases where the school signed a person's name on the loan application or the promissory note, and certain cases where the school wrongfully endorsed a person's name on the loan check, or the borrower's authorization for electronically transferring loan proceeds.

The Secretary believes that if the school rather than the student signed a person's name on the loan application or the promissory note, the putative borrower is not aware that a loan was being applied for and had no intention of entering into an agreement to repay a loan. Therefore, it is reasonable to conclude that a borrower who did not sign the application or promissory note could not have completely understood that a check later presented for endorsement would represent the proceeds of such a loan, and would not have intended to signify by endorsing such a check or authorization to release funds that he or she agreed to become obligated to repay a loan. A school that signed a person's name on a precursory document (the loan application or the promissory note) effectively prevented the person from being fully aware of the relationship normally apparent to a borrower who first completes an application for a loan and later receives a loan disbursement as a result of that application.

The Secretary understands that in some cases, an unscrupulous school may obtain the valid signature of a borrower on the loan application or promissory note and will later sign the student's name on the loan check or the authorization for electronic funds transfer. However, despite these actions, a student could have materially benefitted from the loan proceeds by a

reduction of the charges owed to the school or by otherwise receiving proceeds of the loan delivered by the school. The Secretary believes that a person who signed the loan application and promissory note should be considered an individual who was aware that he or she requested a loan. Therefore, if the borrower (or student on whose behalf a parent borrowed a PLUS Loan) was enrolled at the school during the period of time that the loan (or an installment thereof) was intended to cover, and someone other than the borrower signed the borrower's name on a loan check or authorization for electronic funds transfer, causing the loan proceeds to be applied to the student's account to satisfy a liability for tuition and other charges owed to the school, or to be delivered to the borrower, it is reasonable to conclude that the borrower by that action received the proceeds of the loan he or she had applied. Because that borrower obtained the benefits of the loan disbursement, even though the borrower realized that he or she did not sign the loan check or the authorization for electronic funds transfer, that borrower would be legally obligated with respect to that disbursement. In this case, the Secretary does not believe that a loan discharge was contemplated by Congress. However, if it is determined that the borrower or student did not benefit from the loan proceeds, the Secretary believes that the borrower should be relieved of any obligation to repay the amount of the loan proceeds transmitted as a result of a falsely signed loan check or authorization for electronic funds transfer, and that such relief can be included in the procedures adopted for discharges under section 437(c) of the HEA.

The Secretary is concerned with the plight of students who have been misled by unscrupulous schools, or who have been harmed by a school's failure to fulfill its obligations (such as the payment of a refund to the student). Practices of this sort are violations of 34 CFR part 668, subpart F, which governs misrepresentations by schools. The Secretary will take a broad range of sanctions against schools to enforce these provisions. The Secretary also notes that recent changes made to Title IV, Part H of the HEA will reduce the incidence of school malfeasance. Further, the Secretary will determine if relief can be provided to such students in future regulations or legislative amendments. However, not all cases of school malfeasance can currently be classified as a school's "false certification of a s udent's eligibility to borrow" that would permit a borrower to receive a loan discharge under the HEA. For example, although misrepresentations regarding the school's educational program or its financial or administrative capability, including the school's placement services or the quality of the school's facilities, faculty, or equipment, may well have induced the student to enroll at the school, those representations are not part of the process of "certification" of the student's eligibility to borrow.

Change: The final regulations have been revised to permit false certification discharges in cases where the school, without the authorization of the individual, signed a person's name on the loan application or the promissory note. In addition, the regulations provide relief where the school, without borrower authorization, endorsed the borrower's name on a loan check or authorization for electronic funds transfer, providing that the student did not receive, directly or indirectly, the benefits of the loan proceeds disbursed by that loan check or authorization for electronic funds transfer that was signed by the school. The regulations will include provisions for a borrower to appeal to the Secretary if the borrower disagrees with a guaranty agency's decision that the signatures in question were signed by the borrower.

Section 682.402(e)(3)(ii)(C)

49. *Comment:* Some commenters believed it was unnecessary for the student to certify that he or she was certified by the school on the application for the loan as an eligible student. The commenters believed that this information is seldom known to students because they may never see or understand what the school wrote on the application. The commenters noted that the student could generally deduce that the school had made such a certification by the fact that a lender made the loan, but believe that the same deduction could just as easily be made by a guaranty agency or the Secretary.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to delete this requirement.

Section 682.402(e)(3)(ii)(D)

50. *Comment:* Some commenters believed there is no statutory justification for denying a false certification discharge if the student was able to obtain employment in the occupation for which the student's program was intended to provide training.

Discussion: In the case of a discharge based on a school's defective certification that the student had the ability to benefit from the school's training, this was discussed in detail on pages 2488–2490 of the NPRM published on January 14, 1994 (FR 59, No. 10). The Secretary believes that the ability of a student to obtain employment in the occupation for which the student's program was intended to provide training is evidence that the student was able to benefit from the education received, even though the school may have improperly tested, or failed to test, the student's ability to benefit from the school's training.

Change: None.

51. *Comment:* Some commenters questioned what would constitute a student's "reasonable attempt to obtain employment" and questioned whether it would be fair to expect the student to be able to document, or even remember such attempts that may have been made many years ago.

Discussion: In the absence of evidence to the contrary, a student who states that he or she made a "reasonable attempt to obtain employment" will be presumed to have done so. The student is simply being asked to sign a statement to that effect.

Change: None.

Section 682.402(e)(3)(iv)

52. *Comment:* Some commenters, while believing that borrower cooperation is important in an enforcement action undertaken against a school or other related parties, were concerned that a borrower may be unable to take time away from work, home, or other activities to travel to multiple court appearances needed to assist the Secretary or his designee in the enforcement action. The commenters believed that a borrower should be required to assist in an enforcement action only to the extent practicable for the borrower.

Discussion: The discussion following comment 23 also applies to a false certification discharge.

Change: None.

Section 682.402(e)(5)(i)

53. *Comment:* Some commenters opposed the requirement that a borrower must assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) from any private or public fund. The commenters were particularly concerned with the effect they believed this requirement would have upon state tuition recovery funds. The commenters also believed that the Secretary has no statutory right to any claim against a state tuition recovery fund because the HEA fails to specifically provide the

secretary with that right. The commenters noted that the section 437(c)(2) of the HEA limits the assignment to the Secretary of a borrower's right to a loan refund only to the borrower's rights "* * * against the institution and its affiliates and principals." The commenters contend that there is no indication that Congress intended the Secretary to have access to state funds or to require states to participate economically in false certification discharges. The commenters believed that the HEA's omission of state tuition recovery funds (or any other private or public fund) reflects the principal of statutory construction *"expressio unius est exclusio alterius"* (the expression of one thing is the exclusion of another).

Discussion: The discussion following comment 24 also applies to a false certification discharge.

Change: The final regulations have been revised to exclude the portion of a public fund that represents public money.

54. *Comment:* Some commenters questioned why a borrower must assign to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) with respect to the enrollment agreement for the program for which the loan was received. The commenters believed that the assignment of a borrower's rights pursuant to the enrollment agreement would not gain anything for the Secretary. They were concerned that the borrower would be forced to surrender some rights (unspecified) unnecessarily, despite the statement in § 682.402(e)(5)(iii) that permits the borrower (or student) to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

Discussion: The discussion following comment 25 also applies to a false certification discharge.

Change: None.

Section 682.402(e)(6)(i)

55. *Comment:* Some commenters objected to the requirement that a guaranty agency must review records available from sources other than the guarantor after receiving a false certification claim from a lender or a discharge request from a borrower. The commenters believed this requirement is logistically unrealistic and unnecessarily complicates and delays the processing of a false certification claim.

Discussion: The Secretary believes that the guaranty agency is in the best position to consult with other knowledgeable parties concerning a school's alleged false certification of a student's eligibility to borrow. The Secretary believes that the 90-day time period allows sufficient time for an agency to examine the lender's false certification claim in light of the information available to the agency and to either pay or return the claim to the lender.

Change: None.

Section 682.402(e)(7)(ii)

56. *Comment:* Some commenters believed that a lender that resumes collection activity against a borrower who fails to submit the documentation required for a false certification discharge should be required to grant forbearance to the borrower to absolve the borrower of any delinquency status existing on the loan, including delinquency that occurred before the date the lender suspended collection activity. The commenters believed that the borrower's delinquency is generally the result of the borrower's inability to pay due to circumstances caused by the school.

Discussion: The discussion following comment 36 also applies to a false certification discharge.

Change: None.

Section 682.402(e)(7)(iii)

57. *Comment:* Some commenters objected to the requirement that a payment received by the lender from or on behalf of the borrower after the lender filed a claim on the loan with the guaranty agency must be forwarded to the guaranty agency within 30 days of its receipt. The commenters contended that the guaranty agency is not the legal holder of the loan until it pays a claim, and therefore has no right to the payment.

Discussion: The discussion following comment 38 also applies to a false certification discharge.

Change: None.

Section 682.402(e)(7)(iv)

58. *Comment:* Some commenters believed the guaranty agency, not the lender, should notify the borrower that a false certification discharge has been granted.

Discussion: The discussion following comment 39 also applies to a false certification discharge.

Change: None.

Section 682.402(l)(3)

59. *Comment:* Some commenters believed that any payments received by a guaranty agency from or on behalf of a borrower whose loan obligation has been discharged should be returned to the borrower or the party who made the payment.

Discussion: If a borrower, or a borrower's representative remits a payment for a loan obligation that has been discharged, even though he or she previously has had the payment returned with a notice that the obligation has been discharged and no further payments are required, the Secretary believes it is reasonable to conclude that a subsequent payment from that individual is an indication that he or she has expressed a desire to repay the discharged loan. The Secretary does not believe that the borrower's (or his or her representative's) desire to repay the loan should be frustrated or the taxpayer denied the recovery of such payments.

Change: None.

Section 682.410(b)(6)(i)

60. *Comment:* Some commenters believed the proposed regulations would prohibit a guaranty agency from attempting an annual IRS offset against a borrower if the agency had initiated wage garnishment procedures against the borrower.

Discussion: Under the proposed regulations, a guaranty agency was required to attempt an annual IRS offset against a borrower who owed a defaulted loan if the agency had not attempted to garnish the borrower's wages. Conversely, if an agency had initiated wage garnishment procedures against the borrower, it was not required to attempt an annual IRS offset, but could do so if it decided that it would be an appropriate action to take in addition to wage garnishment. Based on Public Law 102–589, the Secretary will now require a guaranty agency to attempt an annual IRS tax refund offset against both categories of borrowers.

Change: The final regulations have been revised to incorporate this requirement.

Section 682.410(b)(6)(vii)(B)

61. *Comment:* Some commenters noted that the Secretary's guidance to guaranty agencies in July 1993 concerning Public Law 102–589 explained that the law no longer required the Secretary to hold a loan to be collected by IRS offset, therefore, a guaranty agency was no longer required to assign a loan temporarily to the Secretary in order to allow the Secretary to collect the loan by federal income tax refund offset. The commenters recommended that references to such assignments be deleted from the regulations.

Discussion: The Secretary agrees with the commenters.

Change: Sections 682.410(b)(5)(vi)(H) and (L), § 682.410(b)(6)(i), (iii), (iv)(B),

(vii)(A)-(D), (viii)(A), (xii), and § 682.410(b)(7(iv)(B) of the final regulations have been revised, renumbered, or deleted to remove references to such assignments.

Section 682.410(b)(10)(i)

62. *Comment:* Some commenters objected to the requirement that a guaranty agency must follow the procedures prescribed in the regulations if it decided to garnish the wages of a borrower who owed a defaulted loan. The commenters believed that a guaranty agency that possessed authority under state law to effect a garnishment should be permitted to garnish the borrower's wages under the state's wage garnishment procedures.

Discussion: The procedures that a guaranty agency must follow when attempting to garnish a borrower's wages are mandated by section 488A of the HEA. Those procedures supersede any state garnishment laws that do not comply with the requirements of the national wage garnishment authority established by the HEA.

Change: None.

63. *Comment:* Some commenters asked if the wage garnishment procedures would apply against borrowers and employers who were subject to tribal laws. The commenters noted that section 488A(a) of the HEA does not refer to tribal laws, but simply states that the garnishment provisions of the HEA apply "* * * (N)otwithstanding any provision of State law * * *." The commenters observed that because of the difficulty and low success ratio of obtaining a judgment through tribal courts, most creditors no longer even make the attempt.

Discussion: Section 488A(a) of the HEA preempts state laws that might prohibit garnishment to collect student loan debts; it does not preempt such laws of a foreign nation. Certain tribes of American Indians are considered to have the same relationship with the United States as do foreign nations. Therefore, the laws of those tribes are not preempted by the wage garnishment provisions of the HEA.

Change: None.

Section 682.410(b)(10)(i)(A)

64. *Comment:* Some commenters believed the regulations should specify that the amount of a borrower's wages that may be garnished is the lesser of 10 percent of the borrower's disposable pay or the amount allowed by 15 U.S.C. 1673.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to incorporate this clarification.

65. *Comment:* Some commenters believed the regulations should specify the deductions from a borrower's wages that would take precedence over a wage garnishment order.

Discussion: Only a borrower's disposable pay is subject to garnishment. Since "disposable pay" is defined as that part of a borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld, any such deductions "take precedence" and will affect the amount recovered from the borrower through garnishment. The Secretary has no authority to modify the withholding orders issued by other entities legally empowered to garnish the borrower's pay for other purposes.

Change: None.

Section 682.410(b)(10)(i)(D)

66. *Comment:* Some commenters believed that a guaranty agency should be permitted to automatically garnish the wages of a borrower who failed to maintain the terms of a repayment agreement with the guaranty agency. The commenters believed that it is unnecessary to provide further notice or appeal opportunities to a borrower who has broken the terms of the repayment agreement. Similarly, other commenters believed that a guaranty agency should be permitted to proceed with wage garnishment against a borrower who has defaulted on a loan without being required to offer a repayment opportunity to the borrower. The commenters believed that a borrower who has defaulted on a loan has already had numerous opportunities to repay the loan. Some commenters suggested that a borrower be limited to only one repayment opportunity.

Discussion: All attempted garnishments must be preceded by a notice to the borrower of the guaranty agency's intention to initiate garnishment proceedings and an explanation of the borrower's rights, including the right to a hearing. The due process protection afforded the borrower under the HEA's garnishment rules renders previous repayment arrangements between the borrower and the agency irrelevant. Each garnishment action must be able to stand on its own as far as compliance with the requirements of the statute and regulations is concerned.

Change: None.

67. *Comment:* Some commenters believed that the wage garnishment provisions of the HEA applied only to a borrower who entered into a repayment agreement with the guaranty agency and then later failed to comply with the terms of that agreement. The commenters believed there is no statutory authority to garnish the wages of a borrower simply because the borrower has defaulted on the loan obligation and has not made arrangements with the guaranty agency to repay the debt.

Discussion: The HEA permits a guaranty agency to garnish the pay of a borrower who "* * * is not currently making required repayment under a repayment agreement * * *." A borrower who owes a defaulted loan and has simply refused to make any repayment arrangement with a guaranty agency would certainly fit that description. Otherwise, borrowers could shield themselves from wage garnishment by refusing to enter into agreements to repay their loans to guaranty agencies. The HEA and the regulations are not designed to provide incentives to borrowers who refuse to repay their debts.

Change: None.

68. *Comment:* Some commenters believed that the terms of the repayment agreement opportunity that a guaranty agency must offer a borrower prior to wage garnishment must be similar to the terms offered to a borrower under the loan rehabilitation program, that is, the borrower may not be required to pay more than a reasonable and affordable amount.

Discussion: Section 488A(a)(4) of the HEA states that an individual subject to wage garnishment shall be provided an opportunity to enter into a written agreement with the guaranty agency under terms agreeable to the guaranty agency. Unlike other areas of the HEA that contain provisions mandating that the borrower's payment be "reasonable and affordable," the wage garnishment section of the HEA contains no such requirement. The Secretary believes this is because Congress realized that a borrower who has not repaid his or her loan will have had numerous opportunities to have done so prior to the initiation of a wage garnishment proceeding. For example, the borrower will have already declined the opportunity to make payments under the loan rehabilitation program.

However, since it would make no sense to demand a payment amounts from a borrower who could documen. that he or she was unable to pay those amounts, the Secretary encourages a guaranty agency, even at this late point, to attempt to accommodate a borrower who expresses a willingness to repay the loan but who is unable to do so

under the terms proposed by the guaranty agency because of a documented hardship explained by the borrower.

Change: None.

Section 682.410(b)(10)(i)(E)

69. *Comment:* Some commenters believed a guaranty agency should be permitted to include a notice to the borrower about wage garnishment with the agency's other notices to the borrower about hearing opportunities available to the borrower with respect to IRS offset procedures and credit bureau reporting. The commenters recommended that a guaranty agency not be required to provide the borrower with an opportunity for a hearing more than once every 12 months. The commenters also believed that if the borrower had received a hearing and unsuccessfully contested the existence or the amount of the debt, the borrower need not be provided another hearing on those issues.

Discussion: As permitted under § 682.410(b)(5)(vi)(H), a guaranty agency may send a combined notice, or separate notices to a borrower concerning credit bureau reporting, IRS offset, wage garnishment, and any other enforcement action that may be taken to collect the debt. However, each garnishment proceeding taken against a borrower must comply with the notice and due process requirements that are unique to wage garnishment.

Change: None.

Section 682.410(b)(10)(i)(F)

70. *Comment:* Some commenters objected to the requirement that a guaranty agency must sue an employer who fails to comply with a garnishment order. The commenters note that section 488A(a)(6) of the HEA provides an option by stating that a guaranty agency "* * * may sue the employer." Other commenters recommended that the regulations permit a guaranty agency to decline to sue an employer who fails to comply with the wage garnishment order if the agency can demonstrate that the expected cost and probability of success of the litigation did not justify a lawsuit.

Discussion: The statutory language provides the authority for a guaranty agency to sue the employer. A guaranty agency is not required to garnish the wages of borrowers who owe defaulted loans, but if an agency chooses to do so, it must follow the garnishment procedures prescribed in these regulations. In order to protect the interests of borrowers and taxpayers, the Secretary believes a guaranty agency should make use of the full extent of the statutory authority available to it under the HEA to compel an employer to comply with a wage garnishment order. The Secretary cannot envision any realistic probability that an agency would be unsuccessful in its suit against an employer that was in clear violation of the garnishment order. Given the expectation of such success, the Secretary believes the agency's litigation efforts and costs would be minimal. Accordingly, this would be part of the agency's normal performance of its role of ensuring the maximum collection of defaulted loans, and the Secretary may refuse to make reinsurance payments, or may recover reinsurance payments already made to an agency that fails to sue an employer that was in clear violation of the garnishment order.

Change: None.

71. *Comment:* Some commenters did not believe that a self-employed borrower should be considered an "employer" for wage garnishment purposes. The commenters believed that garnishment should be considered a proceeding to seize the wages of a debtor paid by another party.

Discussion: The Secretary agrees with the commenters.

Change: The reference to a self-employed borrower in § 682.410(b)(10)(i)(F) has been deleted from the final regulations.

Section 682.410(b)(10)(i)(G)

72. *Comment:* Some commenters were opposed to the qualified prohibition in the regulations that prevents a guaranty agency from garnishing the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The commenters believed that the proposed regulations appear to condone garnishment as long as the guarantor is not aware that the borrower has been involuntarily separated from employment and has not been reemployed continuously for at least 12 months. They believed that the HEA does not permit garnishment under any circumstances until a borrower who has been involuntarily separated from employment has been reemployed continuously for at least 12 months.

Discussion: The borrower will be informed of his or her rights with respect to wage garnishment in the notice sent to the borrower at least 30 days before the initiation of garnishment proceedings. That notice will include information about the exception provided for a borrower who has been involuntarily separated from employment.

Note: All garnishments initiated by guaranty agencies on or after March 1, 1994 must comply with the standardized administrative wage garnishment procedures approved by the Secretary on February 1, 1994. As part of those standardized procedures, a guaranty agency must send notice to the borrower prior to initiating garnishment. The standardized notice fully explains the exception for involuntarily separated borrowers and includes a simple form for the borrower to fill out to request this exception.

If a borrower who meets the conditions necessary for this exception wishes to take advantage of it, the borrower will be able to do so quite easily, either before the garnishment proceedings are initiated, or during the hearing available to the borrower. If the borrower chooses not to divulge information concerning an involuntary separation, and there is no reasonable expectation that the guaranty agency should have known about the borrower's undisclosed involuntary separation, the Secretary believes that a resulting garnishment of the borrower's wages should not be invalidated if the borrower later contests the garnishment on those grounds or if the agency later learns that the borrower would have been eligible for the exception.

Change: None.

Section 682.410(b)(10)(i)(I)

73. *Comment:* Some commenters believed the withholding notice sent to a borrower's employer should inform the employer that the HEA prohibits wage garnishment if the borrower has not been reemployed continuously for at least 12 months.

Discussion: All information relating to the borrower's rights will be disclosed to the borrower. The borrower's employer needs to know only that information necessary for the employer to comply with the withholding order.

Change: None.

Section 682.410(b)(10)(i)(J)

74. *Comment:* Some commenters believed that, to avoid a misunderstanding, the regulations should state that the location of a borrower's wage garnishment hearing is established by the guaranty agency.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to incorporate this clarification.

75. *Comment:* Some commenters believed that a wage garnishment hearing held by a guaranty agency should be a taped hearing held in a location accessible to the borrower. The commenters also believed that the borrower should be given the right to

appeal any adverse decision of the guaranty agency to the Secretary, and the borrower should be informed of that right.

Discussion: The regulations require a guaranty agency to provide a hearing by a telephone conference with a borrower who requests that type of hearing. All telephonic costs associated with the hearing will be the responsibility of the guaranty agency. The Secretary believes this option reasonably accommodates borrowers who either choose to or who are unable to attend an in-person hearing with the guaranty agency. The Secretary sees no reason to compel a guaranty agency to tape the hearing, but would not object if an agency wished to do so. The Secretary does not intend to second-guess an agency's decisions about wage garnishments on a case-by-case basis. However, if the Secretary learns that a guaranty agency has failed to comply with procedures prescribed by the HEA and the regulations, or has failed to adhere to the standardized procedures required of all agencies (see note included in the discussion for § 682.410(b)(10)(i)(G) above), the Secretary will take appropriate action.

Change: None.

Section 682.410(b)(10)(i)(K)

76. *Comment:* Some commenters believed that the regulations should clarify that, absent evidence to the contrary, the borrower shall be deemed to have received the notice of intent to garnish five days after its mailing date. The commenters believed this would prevent disputes about the date the borrower received the notice.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to incorporate this clarification in this paragraph, and the associated paragraph 682.410(b)(10)(i)(L).

Section 682.410(b)(10)(i)(L)

77. *Comment:* Some commenters opposed the requirement that a guaranty agency must provide a hearing to a borrower whose written request for the hearing is received later than 15 days after the borrower received a notice of withholding. The commenters believed there is no statutory support for any exception to what they perceive to be a rigid 15-day deadline for a borrower to make such a request.

Discussion: The commenters are incorrect. Section 488A(b) of the HEA specifically requires a guaranty agency to provide a hearing upon a borrower's request, even if the borrower's request is not made timely. Although the agency is not required to delay the issuance of a withholding order to the borrower's employer, the agency could do so, as explained in comment 78, if the agency believes a delay would be appropriate.

Change: None.

78. *Comment:* Some commenters believed that even though a borrower's written request for a hearing is submitted late, there could nevertheless be valid reasons why the guaranty agency should not issue a withholding order to the borrower's employer. The commenters believed that this section of the regulations conflicted with § 682.410(b)(10)(i)(H) which permits a guaranty agency to delay or cancel the withholding order if the agency receives information that it believes justifies the delay or cancellation.

Discussion: The Secretary agrees with the commenters.

Change: The final regulations have been revised to permit a guaranty agency to exercise this option

Section 682.410(b)(10)(i)(M)

79. *Comment:* Some commenters believed that the regulations should clarify that guaranty agencies may use alternative types of hearing examiners and are not limited to appointing only an administrative law judge.

Discussion: The Secretary did not intend that the regulations be interpreted in the limited manner that some commenters have done, or in a manner that the commenters believe that other parties will do. A guaranty agency's hearing official may be any qualified individual, including an administrative law judge, who is not under the supervision or control of the head of the guaranty agency.

Change: The final regulations have been revised to incorporate this clarification.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program)

Dated: April 21, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.202 is amended by adding paragraph (a) introductory text, revising paragraphs (a)(1) through (a)(4), and revising paragraphs (c) and (d) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) of this section.

(1) *Stafford Loan Program.* (i) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(*1*) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(*2*) 9 percent.

(iii) For a Stafford loan for which the first disbursement is made before October 1, 1992—

(A) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement is made on or after October 1, 1992, if the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(2) *PLUS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under § 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 10 percent.

(3) *SLS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under § 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 11 percent.

(4) *Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

* * * * *

(c) *Fees for FFEL Program loans.* A lender—

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by federal statute;

(2) Shall charge a borrower an origination fee on an unsubsidized Stafford loan of 3 percent of the principal amount of the loan;

(3) Shall charge a borrower an origination fee on an SLS or a PLUS loan of 3 percent of the principal amount of the loan;

(4) Shall deduct a pro rata portion of the fee (if charged) from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

(d) *Insurance Premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 1 percent of the principal amount of the loan, if that charge is provided for in the promissory note.

* * * * *

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091a)

3. Section 682.208 is amended by revising paragraphs (e)(1) and (e)(2), and adding new paragraphs (e)(4), (e)(5), and (h) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e)(1) If the assignment of a Stafford, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide, either jointly or separately, a notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments or communications must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) If the assignor and assignee separately provide the notice required by paragraph (e)(1) of this section, each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

* * * * *

(4) The assignee, or the assignor on behalf of the assignee, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of—

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that can be used to obtain information about the repayment of the loan.

(5) The requirements of this paragraph (e), as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

* * * * *

(h) *Notifying the borrower about a servicing change.* If an FFEL Program loan has not been assigned, but there is a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, the holder of the loan shall, no later than 45 days after the date of the change, provide notice to the borrower of the name, telephone number, and address of the party to whom subsequent payments or communications must be sent. The requirements of this paragraph apply if the borrower is in a grace period or has entered the repayment period.

* * * * *

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

4. Section 682.402 is amended by revising the heading; by revising paragraph (a); by revising paragraphs (b) and (c)(1); by redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), (l), and (m), respectively; by further

redesignating newly designated paragraphs (g)(2)(ii), (h)(2)(ii) and (k)(3) as paragraphs (g)(2)(iv), (h)(2)(iii), and (k)(5), respectively; by adding new paragraphs (d), (e), (g)(1)(vi), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (h)(1)(iii), (h)(2)(ii), (h)(2)(iv), (h)(2)(v), (k)(4), and (m)(5); by revising newly redesignated paragraphs (f)(2) and (f)(3), (f)(4) introductory text, (g) heading, (g)(1) introductory text, (g)(1)(i), (g)(2) introductory text, (g)(2)(i), (h) heading, (h)(2)(iii), (h)(3)(i), (h)(3)(ii), (i)(2) heading and introductory text, (i)(2)(iv), (j) heading, (j)(1) introductory text, (j)(2), (k)(2), (k)(5), (l), and (m) introductory text; by removing the word "and" at the end of paragraph (m)(3)(ii); by adding and reserving paragraph (k)(3); and by removing the period at the end of paragraph (m)(4), and adding in its place, a semicolon, to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, and false certification by a school of a borrower's eligibility for a loan, are set forth in this section.

(2) If a PLUS loan was obtained by two parents as co-makers, or a Consolidation loan was obtained by a married couple, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) of this section, a loan qualifies for payment under this section only to the extent that tne loan is legally enforceable under applicable law by the holder of the loan.

(4) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(4) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) *Death.* (1) If an individual borrower dies, or, on or after July 23, 1992 the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2) In determining that a borrower (or student) has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable state law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be discharged only if the guaranty agency determines that other evidence establishes that the borrower (or student) has died.

(3) After receiving information indicating that the borrower (or student) has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 60 days, the lender shall diligently attempt to obtain documentation verifying the borrower's (or student's) death. If, despite diligent attempts, the lender is not able to confirm the borrower's (or student's) death within 60 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. In the case of a Consolidation loan, the borrower must certify that the condition did not exist prior to the time the borrower applied for each of the underlying loans, unless the condition has substantially deteriorated, so as to render the borrower totally and permanently disabled. If the condition existed prior to the date the Consolidation loan was made, the borrower must provide the lender with the disbursement dates of the underlying loans if the information does not already appear in the borrower's loan file possessed by the lender.

* * * * *

(d) *Closed school.*—(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled, closed, or the borrower (or student) withdrew from the school not more than 90 days prior to the date the school closed. This 90-day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing would justify an extension.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) The term "borrower" includes all endorsers on a loan; and

(C) A "school" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph

(d) of this section relieves the borrower of an existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under paragraph (d) of this section a borrower shall submit to the holder of the loan a written request and sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall state—

(i) Whether the student has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with § 682.605(c), or the student withdrew from the school not more than 90 days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (d)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (d) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (d) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities—* (i) *Procedures applicable if a school closed on or after January 1, 1986, but prior to June 13, 1994.* (A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89–G–159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(*1*) Notify all lenders participating in its program to mail a discharge application explaining the procedures

and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(*2*) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency—

(*1*) Made that determination based on information available to the guaranty agency;

(*2*) Was notified by the Secretary that the school had not closed;

(*3*) Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;

(*4*) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(*5*) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(ii) *Procedures applicable if a school closed on or after June 13, 1994.* (A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(*1*) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(*2*) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(ii)(B)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(*2*) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) If the guaranty agency determines that a borrower identified in paragraph

(d)(6)(ii)(C) or (D) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency—

(*1*) Made that determination based on information available to the guaranty agency;

(*2*) Was notified by the Secretary that the school had not closed;

(*3*) Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;

(*4*) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(*5*) Received the borrower's completed application and sworn statement.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement in the light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and shall take the following actions—

(*1*) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with § 682.402(h) not later than 90 days after the agency received the claim; or

(*2*) If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The lender or guaranty agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(I) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(7) *Lender responsibilities.* (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments).

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(e) *False certification by a school of a student's eligibility to borrow and unauthorized disbursements.*—(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. For purposes of a false certification discharge, the term "borrower" includes all endorsers on a loan. A student's eligibility to borrow shall be considered to have been falsely certified by the school if the school—

(A) Admitted the student on the basis of ability to benefit from its training and the student did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation

discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) *Borrower qualification for discharge*. In order to qualify for discharge of a loan under paragraph (e) of this section the borrower shall submit to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall—

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, state that the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section; and

(C) Withdrew from the school and did not find employment in the occupation for which the program was intended to provide training, or completed the training program for which the loan was made and made a reasonable attempt to obtain employment in the occupation for which the program was intended to provide training, and—

(*1*) Was not able to find employment in that occupation; or

(*2*) Obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan;

(iii) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note—

(A) State that the signature on either of those documents was not the signature of the borrower; and

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature;

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer, or authorize the school to do so;

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature; and

(C) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(v) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(vi) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) *Cooperation by borrower in enforcement actions*. (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties*. (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities—general*. (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized

disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) Upon receipt of a discharge claim filed by a lender or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

(v) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender or the guaranty agency.

(7) *Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(7) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(7)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(7)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(7)(iii)(B)(*1*) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(7)(iii)(B) of this section.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the electronic transfer of loan funds.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(*3*) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(*4*) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iv)(B)(*1*) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iv)(B) of this section.

(9) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(9) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the electronic transfer of loan funds.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines tnat a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(10)(ii)(D)(*2*) of this section, and

within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days—

(*1*) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(*2*) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(iii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(iii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer authorization, if the agency determines that the borrower meets the conditions for a discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(9)(iii) through (v) if the agency determines that the borrower does not qualify for a discharge.

(11) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(7)(iii)(B)(*2*), (e)(8)(iv)(B)(*2*), (e)(9)(iii)(B), or (e)(10)(iv)(B) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(8)(iv) through (vii) or (e)(9)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(7)(ii), (e)(8)(ii), (e)(8)(iii), (e)(9)(ii), (e)(10)(ii), or (e)(10)(iii) of this section, as applicable.

(12) *Lender Responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(v) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(8)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(ii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to credit bureaus as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the

requirements specified in paragraph (e)(8)(ii)(B) of this section.

(vi) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(13) *Requirements for admission on the basis of ability to benefit.* (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1991, a student who had a general education diploma or received one before the scheduled completion of the program of instruction is deemed to have the ability to benefit from the training offered by the school.

(ii) A student not described in paragraph (e)(8)(i) of this section is considered to have the ability to benefit from training offered by the school if the student—

(A) For periods of enrollment beginning prior to July 1, 1987, was determined by the school to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6;

(B) For periods of enrollment beginning on or after July 1, 1987, achieved a passing grade on a test—

(*1*) Approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991, or by the accrediting agency, for other periods; and

(*2*) Administered substantially in accordance with the requirements for use of the test; or

(C) Successfully completed a program of developmental or remedial education provided by the school.

(iii) Notwithstanding paragraphs (e)(8)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if the student had, at the time of enrollment, a condition or status, including one based on a physical or mental condition, age, or criminal record, that would have prevented the student from satisfying the physical requirements or the legal requirements of the State in which the student resided when the loan was made for either acceptance into the educational program offered by the school or performance of the occupation for which the program of instruction was designed to prepare the student.

(f) * * *

(2) *Suspension of collection activity.* If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(i) Against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13; and

(ii) Against any co-maker or endorser who has filed for relief in bankruptcy.

(3) *Determination of filing.* The lender shall determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other confirmation issued by the bankruptcy court.

(4) *Proof of claim.* Unless instructed otherwise by the guaranty agency, the lender shall file a proof of claim with the bankruptcy court within—

* * * * *

(g) *Claim procedures for a loan held by a lender*—(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

(i) The original promissory note, or, if the lender no longer has the original promissory note, a copy of the note certified by the lender as a true and accurate copy;

* * * * *

(vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;

(vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or the lender determines that the borrower is totally and permanently disabled.

(ii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iii) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

* * * * *

(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency.*

(1) * * *

(iii) In the case of a closed school claim or a false certification claim based on the determination that the borrower did not sign the loan application, the promissory note, or the authorization for the electronic transfer of loan funds, or that the school failed to test, or improperly tested, the student's ability to benefit, the guaranty agency shall document its determination that the borrower is eligible for discharge under paragraphs (d) or (e) of this section and pay the borrower or the holder the amount determined under paragraph (h)(2) of this section.

(2) * * *

(ii) The amount of loss payable to a lender on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(iii) In the case of a claim filed by a lender on an outstanding loan owed by the borrower, on the same date that the agency pays a claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a claim filed by a lender based on a request received from a borrower whose loan had been repaid in full by, or on behalf of the borrower to the lender, on the same date that the agency notifies the lender that the borrower is eligible for a closed school or false certification discharge, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(v) In the case of a loan that has been included in a Federal Consolidation Loan, the agency shall pay to the holder of the borrower's Consolidation Loan, an amount equal to—

(A) The amount paid on the loan by or on behalf of the borrower at the time the loan was paid through consolidation;

(B) The amount paid by the consolidating lender to the holder of the loan when it was repaid through consolidation; minus

(C) Any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source if those refunds or payments were—

(*1*) Received by the borrower or received by the holder and applied to the borrower's loan balance before the date the loan was repaid through consolidation; or

(*2*) Received by the borrower or received by the Consolidation Loan holder on or after the date the consolidating lender made a payment to the former holder to discharge the borrower's obligation to that former holder.

(3) * * *

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

* * * * *

(i) * * *

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13.* The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

* * * * *

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

* * * * *

(j) *Mandatory purchase by a lender of a loan subject to a bankruptcy claim.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

* * * * *

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* * * *

* * * * *

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under § 682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower (or each of the co-makers) has died, become totally and permanently disabled since applying for the Consolidation loan, or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay—

(i) The borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source; or

(ii) The amount determined under paragraph (h)(2)(iv) of this section to the holder of the borrower's Consolidation Loan.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death, disability, or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, became totally and permanently disabled, or filed a petition for relief in bankruptcy until the Secretary authorizes payment; or

(ii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(l) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim.* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall remit 100 percent of these payments to the Secretary.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third-party with respect to a loan on which the Secretary previously paid a closed school or false certification claim. The guaranty agency shall promptly return to the borrower or the borrower's representative, any payment on a discharged loan made by the borrower (or representative) and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the borrower (or representative) that there is no obligation to repay a loan discharged by virtue of death, disability, false certification, or closing of the school.

(3) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (l)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency shall remit all of those payments to the Secretary.

(m) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period—

* * * * *

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

* * * * *

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

5. Section 682.410 is amended by revising paragraphs (b)(5)(vi)(H) and (b)(5)(vi)(L), (b)(6)(i), (b)(6) (iii) introductory text and (b)(6)(iii)(A), (b)(6)(iv) introductory and (b)(6)(iv)(B), (B)(6)(vii) introductory text, (b)(6)(vii)(A), removing paragraphs (B)(6)(vii)(B) and (b)(6)(vii)(C) and redesignating paragraph (b)(6)(vii)(D) as paragraph (b)(6)(vii)(B) and reserving it, revising paragraph (b)(6)(xii), revising paragraph (b)(7)(iv)(B), and by adding a new paragraph (b)(10), and by revising the authority citation to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vi) * * *

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against federal or state income tax refunds or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

* * * * *

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) A guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6) (iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, and shall attempt an annual IRS offset on each eligible loan, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6) (iii) through (vi) of this section.

If, after initiating wage garnishment procedures, the agency terminates those procedures for a particular borrower, the agency shall, within 30 days, commence collection efforts at least as forceful as those described in paragraphs (b)(6) (iii) through (xii) of this section. The agency's collection efforts shall begin with the same collection activities as those that immediately preceded the initiation of garnishment procedures, or, if no collection activities had been performed, the agency shall begin with the activities described in paragraph (b)(6)(iii) of this section, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6) (iii) through (vi) of this section.

* * * * *

(iii) One-45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section, and a written notice stating that the agency either will initiate procedures to garnish the borrower's wages, or institute a civil suit to compel repayment of the amount that the borrower owes plus related collection costs; and

* * * * *

(iv) 46–180 days: During this period the agency shall—

* * * * *

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the initiation of procedures to garnish the borrower's wages, or to offset the borrower's state and federal income tax refunds, or instituting a civil suit to compel repayment of the amount that the borrower owes plus related collection costs.

* * * * *

(vii) 181–545 days:

(A) Except as provided in paragraph (b)(6)(vii)(B) of this section, during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall initiate proceedings to offset the borrower's state and federal income tax refunds, and shall either initiate wage garnishment proceedings against the borrower by the 225th day, or, by the 545th day, institute a civil suit

against the borrower for repayment of the loan.

(B) The agency need not file suit if the agency determines and documents in the borrower's file that—

(*1*) The cost of litigation would exceed the likely recovery if litigation was begun; or

(*2*) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof.

* * * * *

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(B) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and state motor vehicle departments. A guaranty agency shall use any information provided by a school about a borrower's location in conducting skip-tracing activities.

* * * * *

(7) * * *

(iv) * * *

(B) By the end of this period, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

* * * * *

(10) *Administrative Garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

(A) The employer shall deduct and pay to the agency from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.

(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E) The guaranty agency shall offer the borrower an opportunity for a hearing in accordance with paragraph (b)(10)(i)(J) of this section concerning the existence or the amount of the debt and, in the case of a borrower whose proposed repayment schedule under the garnishment order is established other than by a written agreement under paragraph (b)(10)(i)(D) of this section, the terms of the repayment schedule.

(F) The guaranty agency shall sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (b)(10)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(G) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

(H) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(I) The notice given to the employer under paragraph (b)(10)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order.

(J) The guaranty agency shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing shall be established by the agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. All telephonic charges must be the responsibility of the guaranty agency.

(K) If the borrower's written request is received by the guaranty agency on or before the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(10)(i)(B) of this section 5 days after it was mailed by the agency. The guaranty agency shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(L) If the borrower's written request is received by the guaranty agency after the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(10)(i)(B) of this section 5 days after it was mailed by the agency.

(M) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge, not under the supervision or control of the head of the guaranty agency.

(N) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request.

(O) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) References to "the borrower" in this paragraph include all endorsers on a loan.

* * * * *

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087, 1091a, and 1099)

6. Section 682.411 is amended by revising paragraph (d)(2) and the authority citation to read as follows:

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

* * * * *

(d) * * *

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds, to garnish the borrower's wages, and to bring suit against the borrower to compel repayment of the loan.

* * * * *

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087)

7. Section 682.414 is amended by revising paragraph (a)(2) and the authority citation to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purpose of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

* * * * *

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

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May 12, 1994

Part V

Department of Education

34 CFR Parts 75 and 693

National Early Intervention Scholarship and Partnership Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 693

RIN 1840-AB79

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program

AGENCY: Department of Education

ACTION: Final Regulations

SUMMARY: The Secretary provides final regulations to implement the new National Early Intervention Scholarship and Partnership (NEISP) Program in accordance with the provisions in chapter 2, subpart 2, part A, title IV, of the Higher Education Amendments of 1992, (1992 amendments), which amended the Higher Education Act of 1965 (HEA). These final regulations for the NEISP Program specify the role of the Secretary and the responsibilities of the States in the administration of the program. The final regulations also specify the State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's application to participate in the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB-3, Washington, DC 20202-5447. Telephone: (202) 708-4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary provides final regulations to implement the National Early Intervention Scholarship and Partnership (NEISP) Program, a new program authorized under the amended HEA, (Pub. L. 102-325). The Secretary also amends a reference to the NEISP Program in 34 CFR 75.60 of the regulations for the Direct Grant Programs. The Secretary also is making technical amendments in separate final regulations to insert references to the NEISP Program into the appropriate sections of 34 CFR part 668, the Student Assistance General Provisions regulations.

The NEISP Program provides States with Federal financial incentives to establish or maintain a program with matching State-originated funds. It provides for (1) a scholarship component that, to the extent possible, guarantees the financial assistance necessary for eligible low-income students who graduate from high school to attend an institution of higher education, and (2) an early intervention component that uses Statewide resources, both government and private, to provide additional counseling, financial aid counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school.

The NEISP Program's early intervention component supports National Education Goals 2 (High School Completion), 3 (Student Achievement and Citizenship), and 4 (Science and Mathematics). The NEISP Program's scholarship component also supports National Education Goal 5 (Adult Literacy and Lifelong Learning).

On March 8, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (59 FR 10926-10937). The major issues addressed by the proposed regulations are discussed in the preamble to the NPRM. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations. One of the technical revisions is that the Secretary is including in § 693.40(d) the requirement under section 404D(d)(2) of the HEA that, to be eligible for a NEISP Program scholarship, a student must have received a high school diploma or a certificate of high school equivalence on or after January 1, 1993.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Comment: One commenter applauded the Department's efforts to date, and another commenter noted the many good aspects of the proposed regulations, including their overall clarity and sensitivity to State issues.

Discussion: The Secretary agrees with the commenters and thanks them for their support.

Changes: None.

Section 693.10 What must a State do to obtain a grant under this program?

Comment: One commenter recommended § 693.10(b)(1) be modified to have the State agency that administers the State Student Incentive Grant (SSIG) Program be the only designated agency for administering the NEISP Program. The commenter believed that, since the SSIG agency was already involved with the administration of grant and loan programs as well as early intervention programs, the agency would be able to ensure that the Statewide efforts would be well-coordinated.

Discussion: While the circumstances described by the commenter may be true in some States, the States vary with respect to how they distribute various responsibilities among State agencies. The Secretary, therefore, continues to believe that requiring the Governor of a State to designate the agency responsible for the NEISP Program provides necessary flexibility for the States. In addition, it ensures that program funds are allocated to an appropriate and responsible State agency and is consistent with other Federal and State-administered student financial aid programs, such as the SSIG Program.

Changes: None.

Section 693.10 What must a State do to obtain a grant under this program? And Section 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

Comment: One commenter believed that a State would have to identify private funds expended within the State under § 693.10(b)(5)(i) and § 693.13(a)(4) to ensure that the funds provided under the NEISP Program will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs. The commenter believed that it would be sufficient to document the amount of State funds expended on need-based student financial aid alone or the amount expended for State-

matching funds for the NEISP Program. One commenter was also concerned that, in the Supplementary Information section of the preamble to the NPRM (59 FR 10927), the discussion of this requirement can be interpreted to mean that a State's matching expenditures under the NEISP Program should be an amount that exceeds, as opposed to being an amount that is in addition to, the amount of funds the State previously expended. Another commenter questioned whether State funds appropriated to postsecondary institutions and used for student assistance in the State could be used as matching funds under § 693.10(b)(5).

Discussion: The Secretary notes that the texts of § 693.10(b)(5)(i) and § 693.13(a)(4) refer only to "State and local," *i.e.*, public, expenditures as does the applicable statutory provision (section 404B(b)(3) of the HEA). Under § 693.10(b)(5)(i) and § 693.13(a)(4), a State's matching funds under the NEISP Program represent expenditures that are in addition to the level of funds previously expended instead of a matching amount that exceeds the previous level of expenditures, and these funds may include State funds appropriated to postsecondary educational institutions and used for student grant aid including tuition waivers at public institutions.

Changes: None.

Section 693.11 What requirements must be met by the State under the program's early intervention component?

Comment: Two commenters requested clarification concerning whether under § 693.11(a) the States were required to provide all of the early intervention services listed or whether the activities cited are examples that States may choose to incorporate into their NEISP Program.

Discussion: Under section 404C(b)(3) of the NEISP Program statute, the early intervention activities listed are given as examples of permissible activities. Section 693.11(a) therefore provides States with examples of acceptable early intervention activities.

Changes: The Secretary is amending § 693.11(a) to clarify that the activities listed in § 693.11(a) are examples of appropriate activities.

Section 693.12 What requirements must be met by the State under the program's scholarship component?

Comment: One commenter recommended modifying § 693.12(c) (1) and (2) to include an option for a State to award scholarships based on the State's definition and prioritization of low-income students as an alternative to the expected family contribution (EFC) as calculated under part F of title IV of the HEA. Another commenter recommended the Secretary adopt as a standard for defining low-income students the standard used for the Federal TRIO programs.

Discussion: The Secretary agrees with the commenter that there are additional standards for identifying low-income students and agrees that a State should be able to use the State's criteria for identifying low-income students in prioritizing eligible students as an alternative to using the EFC. However, the Secretary believes that using the EFC represents a proven methodology for identifying low-income students and that it is in the Federal interest for any departures from using the EFC to be subject to approval by the Secretary.

Changes: The Secretary is amending § 693.12(c) (1) and (2) to provide a State the option of developing and using its own criteria for identifying a low-income student if approved by the Secretary.

Comment: One commenter recommended changing the wording under § 693.12(f) to clarify that the assumption should not be made that NEISP recipients must receive other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

Discussion: The Secretary agrees that an NEISP recipient need not be receiving other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

Changes: The Secretary is amending § 693.12(f) to clarify that this provision applies to a NEISP Program scholarship recipient who also is eligible for and receiving other student assistance.

Section 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

Comment: One commenter believed that the extensive data requested under § 693.20(e)(2) should be collected for the targeted area in which the State plans to operate its program rather than providing data covering the entire State.

Discussion: The Secretary believes that, in order to be able to target the areas in which the NEISP Program will be most beneficial, it is necessary for States to collect and analyze Statewide data as required under § 693.20(e)(2). The Secretary notes that this requirement is not intended to be overly prescriptive and that a State is expected to have sufficient information available to make a reasonable determination of Statewide needs for early intervention activities.

Changes: None.

Section 693.22 How does the Secretary allot funds to States on a competitive basis?

Comment: One commenter believed that the "tie-breaker" to be used in the selection of similarly rated applications under § 693.22(c)(4) should not give preference to Statewide programs. Due to the limited Federal funding, the commenter proposed that priority be given to programs that will serve a targeted population well, rather than serving students Statewide but in a less effective way.

Discussion: The Secretary believes that the emphasis placed on selecting applicants with Statewide, coordinated programs is appropriate. Since this provision is a "tie-breaker" for otherwise similarly rated applications, the Secretary does not believe that the State providing services to more areas will be less effective.

Changes: None.

Comment: One commenter believed that early intervention programs should be provided as early in a student's schooling as necessary to be effective and, therefore, believed that there should be a stronger preference for long-term early intervention programs in the selection criteria.

Discussion: During the development of the NPRM, the Secretary gave careful consideration to the need to emphasize long-term mentoring and advising and believes that adequate emphasis on long-term mentoring and advising has been incorporated into § 693.22 after taking into consideration the overall objectives of the early intervention program.

Changes: None.

Section 693.40 What are the requirements for a student to receive a scholarship under this program?

Comment: One commenter recommended adding to the scholarship requirements under § 693.40 that a student (1) must meet or exceed the academic milestones listed in the student agreement and (2) be determined at the time of application to be a low-income student.

Discussion: If a State, as part of its early intervention program under § 693.11, requires a student to sign an agreement that includes academic milestones, the Secretary agrees that the State should be able to require that a student meet these milestones as one of the student eligibility requirements for a scholarship. However, if a student has participated in the early intervention program, the student should be eligible

for scholarship consideration since income level is not necessarily the basis for determining scholarship eligibility in the NEISP Program under section 404D(d) of the HEA.

Changes: The Secretary is amending § 693.40 to provide that if a State includes academic milestones in a written agreement signed by a student under § 693.11(a)(3), it may include meeting these milestones as a scholarship eligibility requirement.

Comment: One commenter believed that under proposed § 693.40(e) (1) and (2) the Secretary should not limit scholarship eligibility to those students who participated in the NEISP Program or a Federal Upward Bound Program. The commenter believed that accepting early intervention programs comparable to those described in section 404C of the program statute as meeting the requirement would allow States the flexibility to identify additional students as eligible to receive scholarships.

Discussion: The Secretary agrees with the commenter and further notes that section 404D(d)(4) of the HEA clearly provides for such an option since it does not require that the early intervention program establishing student eligibility for a scholarship be funded under the NEISP Program as is required in the case of the Federal Upward Bound Program in section 404D(e)(2) of the HEA.

Changes: The Secretary is amending § 693.40 to add § 693.40(g)(3) which provides the option to a State to consider other comparable early intervention programs as also meeting this student eligibility requirement.

Section 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

Comment: One commenter believed that, due to the comprehensive nature of the biennial evaluation report under § 693.50(b), it would not be reasonable to estimate one hour to complete the report. In the commenter's opinion, the report could not be designed and implemented in less than two staff months.

Discussion: The Secretary agrees and is amending the burden hour estimate to reflect two staff months. The Secretary encourages each State to work with the Departmental program staff to streamline its evaluation study while still providing relevant policy information.

Changes: None.

Comment: One commenter recommended that under § 693.52(b) the Secretary should not require that a State's biennial evaluation report include all the listed items and, instead, should require only that a State address the listed items to the extent possible.

Discussion: The Secretary believes that, in order to have a comprehensive evaluation of the early intervention program, States must include at a minimum the types of information listed in § 693.53(b). The Secretary recognizes a State's evaluation report may place varying emphasis on the different items listed.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration.

34 CFR Part 693

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

Dated: May 2, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.272, National Early Intervention Scholarship and Partnership Program)

The Secretary amends title 34 of the Code of Federal Regulations by amending part 75 and by adding a new part 693 as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 75.60 [Amended]

2. In § 75.60, paragraph (b)(1) is amended by adding the term "National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21, *et seq.*)," after "(20 U.S.C. 1070a, *et seq.*),".

3. A new part 693 is added to read as follows:

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Obtain a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Authority: 20 U.S.C. 1070a–21 through 1070a–27, unless otherwise noted.

Subpart A—General

§ 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a–21)

§ 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of §§ 693.10, 693.11, 693.12, 693.13, 693.20 (formula grant program), 693.21, and 693.22 (discretionary grant program) are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of § 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of § 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under § 693.21 or § 693.22 to—

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including prefreshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

§ 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary school
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period
EDGAR
Secretary
State

(b) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR part 600.* The following terms used in this part are defined in 34 CFR part 600:

Award year
Institution of higher education
Recognized equivalent of a high school diploma

(c) *Definition in the Student Assistance General Provisions regulations, 34 CFR part 668.* The following term used in this part is defined in 34 CFR part 668:

Academic year

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

At-risk student means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

Disadvantaged student means a student who is either (1) a low-income individual who is also a first-generation college student; or (2) a student with disabilities.

Early intervention program means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

First-generation college student means—

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Limited proficiency in English with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

Low-income individual means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who is considered to be a low-income resident by the State in which he or she lives.

Postsecondary education means a program of education beyond the secondary school level.

Priority student means any student within a State in preschool through grade 12 who is eligible—

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

Scholarship means an award made to an individual under this part.

Secondary school, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

State educational agency (SEA), as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

Student with a disability, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

Subpart B—How Does a State Obtain a Grant?

§ 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under the NEISP Program.

(b) The Secretary approves a State plan that—

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either—

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program,";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both—

(i) An early intervention component meeting the requirements under § 693.11 as evaluated by the Secretary under the criteria in § 693.20 (formula grant program) and § 693.22 (discretionary grant program); and

(ii) A scholarship component meeting the requirements under § 693.12;

(4) Describes the administrative plan for implementing the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will—

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in § 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) Conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in § 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under § 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in § 693.13.

(Authority: 20 U.S.C. 1070a–22 and 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to § 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12. These services may include, but are not limited to, the following kinds of activities:

(1) A continuing system of mentoring and advising that—

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as—

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of this section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as—

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Prefreshman summer programs that—

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including—

(A) Instruction in remedial, developmental, or supportive courses;

(B) Counseling, tutoring, or orientation; and

(C) Grant aid to students to cover prefreshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the prefreshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.
(2) Elementary or secondary schools.
(3) Institutions of higher education.
(4) Public and private agencies.
(5) Nonprofit and philanthropic organizations.
(6) Businesses.
(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV of the HEA.
(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.
(9) Religious organizations.
(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.12 What requirements must be met by the State under the program's scholarship component?

A State shall provide for a scholarship component that—

(a) As described in the State's plan approved by the Secretary under 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by—

(1) Selecting those eligible students who will receive Federal Pell Grants and who—

(i) Have the lowest expected family contributions as calculated under part F of title IV of the HEA; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students who will not receive Federal Pell Grant awards and who—

(i) Have the lowest expected family contributions; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under § 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of—

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to § 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describes to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a–24)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

(a) Each State desiring to participate in the program under this part shall submit an application annually through the State agency designated to administer the NEISP Program under § 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including—

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as—

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to § 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under § 693.10(b).

(b) The Secretary waives the requirement in § 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a–22)

(Approved by the Office of Management and Budget under control number 1840–0677)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under § 693.10(b)(3)(i) meets the requirements of § 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows—

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention

component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under § 693.13(b).

(d) *Adequacy of resources.* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component—

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in § 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under § 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.* (1) The Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers under § 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.21 How does the Secretary allot funds to a State?

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under § 693.10 and an approved application under § 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year

is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in § 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds the State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a–25)

§ 693.22 How does the Secretary allot funds to States on a competitive basis?

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, and 693.13, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d) of this section.

(4) In the final selection of similarly rated applications, the Secretary considers the extent to which a State provides—

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including—

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including—

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i) (A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows

the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994–95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11) (ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, previous State matching funds, and the application under consideration—considers information that shows—

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a)(1).

(Authority: 20 U.S.C. 1070a–25)

(Approved by the Office of Management and Budget under control number 1840–0677)

Subpart D—How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

§ 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under § 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom—

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for

other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance, at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a-23)

Subpart E—How Does a State Award a Scholarship to a Student?

§ 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component of this program, a student must—

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under § 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Have a high school diploma or a certificate of high school equivalence received on or after January 1, 1993;

(e) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside of the State;

(f) If a State includes academic milestones in a student agreement under § 693.11(a)(3) and requires the student to meet the milestones to be eligible for a scholarship, have met or exceeded the academic milestones to receive a scholarship; and

(g)(1) Have participated in the early intervention component of the program under this part;

(2) At the State's option, be a student whom the State documents as having successfully participated in a Federal Upward Bound Program funded under section 402C, chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the Federal Upward Bound program in which the student participated; or

(3) At the State's option, be a student whom the State determines as having successfully participated in an early intervention program comparable to the early intervention component of the program under this part.

(Authority: 20 U.S.C. 1070a-24)

Subpart F—What Postaward Conditions Must Be Met by a State?

§ 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board—computed on a weekly basis—not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if—

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a–22)

§ 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as—

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources not included in the State plan under § 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in § 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a–22)

§ 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation

report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to—

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

[FR Doc. 94–11499 Filed 5–11–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.272]

National Early Intervention Scholarship and Partnership (NEISP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of Program: Under the NEISP Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

Eligible Applicants: The Secretary is authorized to accept applications from the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Republic of Palau, and the Virgin Islands.

Deadline for Transmittal of Applications: June 27, 1994.

Deadline for Intergovernmental Review: August 26, 1994.

Applications Available: May 12, 1994.

Avaliable Funds: The Administration's budget request for fiscal year 1994 did not include funds for this program. However, the Congress has appropriated $1,875,000 in fiscal year 1994 for the early intervention component of the NEISP Program to be allocated to States on a competitive basis. Please note that for fiscal year 1994 no Federal funds are provided for the postsecondary educational scholarship component of the program.

Estimated Range of Awards: $50,000 to $375,000.

Estimated Average Size of Awards: $187,500.

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Product Period: Up to 60 months.

Budget Period: 12 months.

Applicable Regualtions: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77 79, 80, 82, 85 and 86; (b) the regulations in 34 CFR part 600; (c) the regulations in 34 CFR part 668; and (d) the regulations for this program in 34 CFR part 693, as published in this issue of the Federal Register.

Supplementary Information: The Secretary strongly requests the applicant to limit the application narrative to no more than 50 double-spaced, typed pages (on one side only) although the Secretary will consider applications of greater length. The Department anticipates that successful applications under this program generally will meet this page limit.

Priority: None.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 693.22 (d)(1) through (d)(10) of the program regulations.

For Further Information Contact: Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1070a–21 to 1070a–27.

Dated: May 6, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–11500 Filed 5–11–94; 8:45 am]

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federal register

Tuesday
May 17, 1994

Part III

Department of Education

34 CFR Part 682
Federal Family Education Loan Program;
Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AA96

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This document contains corrections and other technical changes to the final regulations for the Federal Family Education Loan Program which were published in the **Federal Register** on December 18, 1992 (57 FR 60280). The regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 682.209. Section 682.209 will become effective after the information collection requirements contained in this section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published later in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Pamela Moran or Patricia Beavan, Policy Section, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, Department of Education, 400 Maryland Avenue SW., (room 4310, ROB–3) Washington, DC 20202. Telephone 202–732–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations make corrections to the final regulations published on December 18, 1992, which contained several self-implementing provisions of the Higher Education Amendments of 1992 (1992 Amendments) (enacted July 23, 1992) (Pub. L. 102–325). The regulations also include two changes made to those self-implementing provisions by the Higher Education Technical Amendments of 1993 (Technical Amendments of 1993) (Pub. L. 102–208) (enacted December 20, 1993).

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, with the exception of two changes made to reflect self-implementing provisions of the Technical Amendments of 1993, all other provisions in this regulation reflect corrections to the Federal Family Education Loan Program (FFEL) regulations published on December 18, 1992. The FFEL regulations published on December 18, 1992 were the subject of extensive public comment prior to the publication. The Secretary has also consulted with and received extensive written comments from members of the higher education community in the development of the corrections to the December 18, 1992 regulations and believes that public comment on these technical corrections for publication of regulations does not warrant the solicitation of further public comment. Moreover, the Secretary believes that it is important to have these technical corrections reflected in the Department's regulations as soon as possible. Therefore, the Secretary finds that such a solicitation would be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 682

Administrative practice and procedures, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087, unless otherwise noted.

§ 682.100 [Amended]

2. In § 682.100, paragraph (a)(3), in the first sentence, add the word "undergraduate" before the word "students", in the second sentence, add the parenthetical phrase "(then known as Auxiliary Loans to Assist Students (ALAS))", after the word "PLUS"; in paragraph (a)(4), remove "PLUS" after "SLS", and add, in its place, "ALAS"; remove "part C", and add, in its place, "part A", after the word "Act", add the phrase ", Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Health Services Act,", remove "borrowers whose loans were made after October 17, 1986", and add, in its place, "loans, or married couples who have a combined indebtedness of at least $7,500 under these programs".

§ 682.10 [Amended]

3. In § 682.101, paragraph (c), in the second sentence, add the word "undergraduate" before the word "students", in the third sentence, remove "Students borrowers", and add, in its place, "Borrowers", add "HEAL, ALAS," after the word "HPSL", remove "or" after "Plus loans", and add a comma in its place, remove the phrase "borrowed after October 16, 1986", and add, in its place, ", or married couples who have a combined indebtedness of at least $7,500 under these programs".

§ 682.102 [Amended]

4. In § 682.102, in paragraph (d), after the second sentence, add a new sentence to read "In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation."; in paragraph (e)(3), in the second sentence, add ", but who has not yet entered repayment on the Stafford loan," after the phrase "Stafford loan borrower"; in paragraph (e)(4), in the first sentence, remove "immediately upon disbursement of the loan", and add, in its place, "on the day the loan is disbursed"; in paragraph (e)(5), after "Generally, the", add, "repayment period for a Consolidation loan begins on the day the loan is disbursed. The".

§ 682.200 [Amended]

5. In § 682.200 paragraph, the definition of "Co-maker" is revised; in the definition of "Default", add "or Consolidation" after "PLUS"; in the definition of "Estimated financial assistance", in paragraph (1)(v), add "to the extent funding is available,", after "campus-based aid,", in paragraph (2), "—(i)" is added after "include", paragraphs (2)(i), (2)(ii), and (2)(iii) are redesignated as paragraphs (2)(i)(A), (2)(i)(B), and (2)(i)(C) respectively, paragraph (2)(iv) is redesignated as paragraph (2)(ii), in redesignated paragraph (2)(i)(A), add the word "Nonsubsidized" before the word "Stafford", in redesignated paragraph (2)(i)(B), add the word "or" after the semicolon; in the definition of "Half-time student", in the first sentence, remove "in a participating school", and add, in its place, "in an eligible institution"; in the definition of

"Origination fee", after the second sentence, add a new sentence to read "The lender must pass this fee on to the SLS or PLUS borrower."; in the definition of "Period of Enrollment", in the second sentence, remove the word "normally", and add, in its place, "generally", before the period, add the parenthetical phrase "(e.g., semester, trimester, quarter, length of the student's program or academic year)"; in the definition of "Repayment period", in paragraph (1), before the word "date", remove the word "that", and add, in its place, the word "the", after the word "date", add "the first payment of principal is due from the borrower", paragraph (2)(i) is revised, in paragraph (2)(ii), after the word "period", add the phrase, "for payment of principal", remove the word "ending", and add, in its place, the word "ends", at the end of the paragraph, add a new sentence to read, "Interest accrues and is due and payable from the date of the first disbursement of the loan."; in the definition of "Stafford Loan Program", in the second sentence, remove the words "An unsubsidized", and add, in their place, the words "A nonsubsidized" to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Co-maker. One of two parents who are joint borrowers on a PLUS loan, each of whom is eligible to borrow, or one of two individuals who are joint borrowers on a Consolidation loan. All co-makers on a loan are jointly and severally liable for repayment of the loan.

* * * * *

Repayment period.

(1) * * *

(2)(i) For PLUS loans, the repayment period for payment of principal begins on the date of the last disbursement of the loan and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

* * * * *

§ 682.201 [Amended]

6. In § 682.201, in paragraph (a), after "if the student", add "who is enrolled or accepted for enrollment on at least a half-time basis at a participating school"; in paragraph (a)(2)(i), after "need for a", add the word "subsidized"; in paragraph (b)(1), after the word "dependent", add "undergraduate"; after the word "student", add "who is enrolled or accepted for enrollment on at least a half-time basis at a participating school and", before the semicolon, add "and the requirement of paragraph (a)(6) of this section"; in paragraph (b)(6), remove the cross reference to paragraphs "(a)(5) and (a)(6)", and add, in its place "(a)(4) and (a)(5)"; in paragraph (c)(1)(i), remove "under this part" and add, in its place "under § 682.100"; paragraph (c)(1)(ii) is revised, new paragraphs (c)(1) (iii) through (vi) are added, paragraph (c)(2)(iii) is revised, and a new paragraph (c)(3) is added to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(c) * * *

(1) * * *

(ii) Has ceased at least half-time enrollment at a school;

(iii) Is, on the loans being consolidated—

(A) In a grace period preceding repayment;

(B) In repayment status; or

(C) In a default status and has made satisfactory repayment arrangements on the loan;

(iv) Certifies that no other application for a Consolidation loan is pending;

(v) Agrees to notify the holder of any change in address; and

(vi) Certifies that the lender holds an outstanding loan of the borrower which is being consolidated or that the borrower has unsuccessfully sought a loan from the holder of the outstanding loans.

(2) * * *

(iii) Meets the requirements of paragraph (c)(1) of this section, except that their combined indebtedness may not be less than $7,500 on loans eligible for consolidation under § 682.100 and only one borrower must have met the requirements of paragraphs (c)(1)(iv), (v), and (vi) of this section.

(3) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except—

(i) With respect to additional student loans received after the date the Consolidation loan is made; or

(ii) Loans received prior to the date the Consolidation loan was made may be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

§ 682.202 [Amended]

7. In § 682.202, paragraph (a)(1)(i)(C), before the semi-colon, add "but before July 1, 1988"; in paragraph (a)(1)(i)(D), after "July 1, 1988", add "and for which the first disbursement is made before October 1, 1992,"; in paragraph (a)(1)(ii), after "the rate", "charged on" is removed and add, in its place "applicable to"; in paragraph (a)(1)(iii), before "the applicable interest rate", add ", for a Stafford loan for which the first disbursement is made before October 1, 1992,"; in paragraph (a)(1)(iv), before "the applicable" add ", for a Stafford loan for which the first disbursement is made before October 1, 1992,"; in paragraph (a)(1)(v), the cross-reference "(a)(1)(i)(C)" is removed, and "(a)(1)(i)(F)" is added in its place; in paragraph (a)(1)(vii), before the word "interest", add the word "applicable"; in paragraph (a)(1)(vii)(A), the cross-reference "(a)(1)(iv)" is removed, and "(a)(1)(viii)" is added, in its place; in paragraph (a)(1)(ix), "December 31" is removed, and "the date the lender credits the adjustment" is added in its place; paragraph (b)(4) is revised; in paragraph (b)(5), ", SLS, PLUS, or Consolidation" is added after "Stafford", in paragraph (c)(5), "the portion of" is removed, "any portion" is removed, and "each disbursement" is added in its place; paragraph (c)(5)(i) is removed, paragraph (c)(5)(ii) is redesignated as paragraph (c)(5)(i), at the end of redesignated paragraph (c)(5)(i) the word "or" is removed, paragraph (c)(5)(iii) is redesignated as paragraph (c)(5)(ii), at the end of redesignated paragraph (c)(5)(ii) the period is removed, and "; or" is added in its place; and new paragraphs (c)(5)(iii) and (h) are added to read as follow:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(b) * * *

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly, or no more frequently than quarterly, or with the borrower's written consent, capitalize on a quarterly basis interest that has accrued during all authorized periods of deferment.

* * * * *

(c) * * *

(5) * * *

(iii) Not released from the restricted account maintained by the school for loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B).

* * * * *

(h) *Special allowance.* Under § 682.412(c), a lender may charge a borrower the amount of special allowance paid the Secretary on behalf of the borrower.

§ 682.205 [Amended]

8. In § 682.205, in paragraph (c), remove "60" and add "30", in its place;

in paragraph (d) introductory text, remove "capitalizing —", and add, in its place, "principal and interest, interest only and capitalized interest.", and paragraphs (d)(1) and (d)(2) are removed.

9. In § 682.206, paragraph (e)(1), after "FISL", add ", SLS"; and a new paragraph (e)(3) is added to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(e) * * *

(3) A Federal Consolidation loan may be made to two eligible spouses provided both borrowers agree to be jointly and severally liable for repayment of the loan as co-makers.

* * * * *

§ 682.207 [Amended]

10. In § 682.207, in paragraph (d)(2)(i)(A), remove the word "charges" and add, in its place, the word "costs".

§ 682.209 [Amended]

11. In § 682.209, in paragraph (a)(1), remove "PLUS loan disbursed in one installment or a"; in paragraph (a)(2)(i), in the first sentence, remove "disbursed in more than one installment", remove the word "first" before the word "disbursement" and add, in its place the word "last", at the end of the second sentence, add a new sentence to read, "Interest accrues and is due and payable from the date of the first disbursement of the loan."; in paragraph (a)(2)(ii), at the end of the first sentence, add a new sentence to read "Interest accrues and is due and payable from the date of the first disbursement of the loan."; in paragraph (a)(3)(ii)(C), remove the word "or", in paragraph (a)(3)(ii)(D), remove the period, and add, in its place "; or", and add a new paragraph (a)(3)(ii)(E); in paragraph (b)(1), in the second sentence, remove "Except as provided in paragraph (b)(2) of this section, the" and add, in its place, "The", before the word "first", add the word "amount", after "outstanding principal" remove the comma and add, in its place, a period, and remove the remainder of the sentence; in paragraph (b)(2), in the first sentence, after the word "installments", add "by advancing the next payment due date,"; in paragraph (c)(1)(i), remove "paragraphs (c)(1) (ii) and (iii)" and add, in its place "paragraph (c)(1)(ii)"; in paragraph (h)(4)(ii), after the word "unless", add ", with respect to any loan being consolidated," to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(E) An additional 30 days beyond the periods specified in paragraphs (a)(3)(ii)(A)–(a)(3)(ii)(D) of this section in order for the lender to comply with the required deadlines contained in § 682.205(c)(1).

* * * * *

§ 682.210 [Amended]

12. In § 682.210, in paragraph (a)(3)(ii), after the word "loan", add "for which the application was received by an eligible lender on or after January 1, 1993"; in paragraph (a)(8), remove the phrase "as to that loan"; in paragraph (b)(6) introductory text, after the word "when", remove "the" and add, in its place, "a"; in paragraph (c)(3), before "SLS", remove "an" and add, in its place "a Stafford,", after the word "application", add "or other form certified by the school or for multiple holders of a borrower's loans, shared data from the Student Status Confirmation Report,", after the word "outstanding", add "Stafford,", and remove "that is held by the lender".

§ 682.211 [Amended]

13. In § 682.211, paragraph (d), in the second sentence, remove the words "repayment obligation" and add, in their place, the words "agreement to repay the debt"; in paragraph (g), remove "12-month intervals" and add, in its place "intervals not to exceed 12 months,".

§ 682.300 [Amended]

14. In § 682.300, paragraph (a), in the first sentence, after the word "loan", add "and, except for that portion of the loan that repaid a HEAL loan, on a Consolidation loan"; in paragraph (b)(2)(ii), remove the phrase "that represents a portion of the loan"; in paragraph (b)(2)(ii)(A), remove the word "negotiated" and add, in its place the word "cashed".

§ 682.302 [Amended]

15. In § 682.302, in paragraph (d)(1)(vi)(A), remove the word "negotiated" and add, in its place, the word "cashed"; in paragraph (d)(1)(vii), after "returns a claim", add "submitted by the deadline specified in (d)(1)(v) of this section".

§ 682.401 [Amended]

16. In § 682.401, in paragraph (b)(5)(ii), remove "432(h)(3)" and add, in its place, "432(h)(2)"; in paragraph (b)(7), in the first sentence, remove "§ 682.404(i)(2)" and add, in its place,"§ 682.404(h)(2)"; in paragraph (b)(8), in the first sentence, remove "§ 682.404(i)(2)" and add, in its place, "§ 682.404(h)(2)"; in paragraph (b)(9)(vi), remove "all or part of"; in paragraph (b)(9)(vi)(A), remove ", or the portion", remove "a portion of a loan disbursed in more than one installment" and add, in its place, the phrase "each disbursement of a loan"; paragraphs (b)(14) through (b)(22) are redesignated as paragraphs (b)(15) through (b)(23), respectively; a new paragraph (b)(14) is added; in redesignated paragraph (b)(16)(i) after "(i)", remove the word "The" and add in its place "Except in the case of a loan assignment that does not result in a change in the identity of the party to whom payments must be made, the" to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(14) Guarantee agency verification of default data. A guarantee agency shall respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

* * * * *

§ 682.402 [Amended]

17. In § 682.402, paragraph (a)(2), after the word "co-makers", add the phrase "or a Consolidation loan was obtained jointly by married borrowers"; in paragraph (g)(3)(ii) remove the cross-reference to "(h)(2)" and add, in its place, "(g)(2)"; in paragraph (k), remove the cross- reference to "11 U.S.C. 523(a)(8)(B)" and add, in its place, "11 U.S.C. 523(a)(8)(A)"; in paragraph (k)(2), after the word "deferment", add, "as provided in § 682.210(a)(5)".

§ 682.404 [Amended]

18. In § 682.404, in paragraph (a)(5), after "section," add "upon request of the school,"; in paragraph (h), after the word "particular", and add the word "participating".

19. In § 682.406, paragraph (a)(3) is revised to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(3) The lender provided—

(i) An accurate collection history to the guaranty agency with the default claim filed on the loan sufficient to support guarantor review for claim payment showing that the lender exercised due diligence in collecting the

loan through collection efforts meeting the requirements of § 682.411, including collection efforts against each endorser; and

(ii) A payment history that supports the claim payment amount.

* * * * *

§ 682.410 [Amended]

20. In § 682.410, in paragraph (b)(6)(ii)(A), in the first sentence, remove from ", or, in the case" to the end of the sentence, in the second sentence, after the word "days", add "during the period specified in paragraph (5)(iv)(B) of this section,"; in paragraph (b)(6)(ii)(C), in the first sentence, after "paragraphs (b)(6)(iii) or (iv) of this section", add "or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii) of this section,", after "paragraphs (b)(6)(iii)-(vii) of this section", add "if the written notice described in paragraph (b)(5)(ii) of this section has been sent,", remove "60 day" and add, in its place, "60 days", before the period, add "or receipt of confirmation of the borrower's address, as applicable"; in paragraph (b)(6)(iii)(A) before the semicolon, add ", unless the notice was previously sent pursuant to paragraph (b)(5)(ii) of this section".

§ 682.411 [Amended]

21. In § 682.411, paragraph (a), remove the cross reference "(c)-(l)", and add, in its place, "(c)-(m)"; in paragraph (b), after the heading, add "(1)", at the end of the second sentence, before the period, add ", except as provided in § 682.209(a)(3)(ii)(E)"; a new paragraph (b)(2) is added; paragraph (d)(5) is removed; in paragraph (f), remove the cross- reference to "(f)(1)", and add, in its place, "(l)(1)"; in paragraph (g)(3), after "(k)", add "(1) through (k)(3) and (k)(5)"; in paragraph (g)(4), remove the cross-reference to "(l)(1) (A) or (B)" and add, in its place, "(l)(1) (i) or (ii)"; in paragraph (i)(2)(ii), at the end of the paragraph, remove the word "or"; paragraph "(i)(2)(iii)" is redesignated as paragraph "(i)(2)(iv)", and a new paragraph "(i)(2)(iii)" is added; in paragraph (k)(3), after "(g)", add "(1)", after the word "address", add "or telephone number"; in paragraph (l)(2), remove the word "address" and add, in its place, "telephone number" to read as follows:

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

* * * * *

(b) * * *

(2) At no point during the periods specified in paragraphs (c) and (d) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

* * * * *

(i) * * *

(2) * * *

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

* * * * *

§ 682.413 [Amended]

22. In § 682.413, in paragraph (c)(6), remove "that violate § 682.206(f)(1)", and add, in its place, "for which the certification required under § 682.206(f)(1) is not available".

§ 682.604 [Amended]

23. In § 682.604, in paragraph (c)(3)(i), after the word "student", add "or parent"; in paragraph (d)(3), after the word "made", add ", or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made"; in paragraph (d)(4), after the word "If", remove "a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if", after "reason to document that" remove the word "the" and add, in its place, "a registered", after "attended school during", remove the words "that period", and add, in their place, "the period of enrollment for which the loan is made", after the word "school", add ", must determine the student's withdrawal date as required under § 682.605(b)(1)(ii), and by the deadline described under § 682.605(b)(1)(A) and (B)"; in paragraph (e)(2), after the word "disbursement", add "made by the lender under § 682.207(d)"; paragraphs (e)(2)(i), (e))2)(ii), and (e)(2)(iii) are redesignated as paragraphs (e)(2)(ii), (e)(2)(iii), and "(e)(2)(iv) respectively, a new paragraph (e)(2)(i) is added; at the end of redesignated paragraph (e)(2)(ii) remove the word "or"; at the end of redesignated paragraph (e)(2)(iii) remove the period and add, in its place, "; or"; in paragraph (e)(4), in the first sentence, after the word "If" remove "a disbursement is received by the school within 60 days after the earlier of the dates described in paragraph (e)(1) of this section, if", remove the word "charges" and add, in its place, "costs"; in paragraph (e)(4)(i), after the words "Return the", add "balance of the"; in paragraph (e)(4)(i)(B), remove the word "correct" and add, in its place, "corrected"; in paragraph (e)(4)(ii), remove the word "charges", and add, in its place "costs" to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(e) * * *

(2) * * *

(i) Deliver the proceeds of a late disbursement to a student borrower whose loan application was certified after the borrower ceased enrollment on at least a half-time basis;

* * * * *

24. In § 682.801, paragraph (d), after the semicolon, remove "and"; and add a new paragraph "(f)", to read as follows:

§ 682.801 Provisions required in Plan.

* * * * *

(f) The Authority shall not purchase student loans at a premium amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition.

Appendix B—[Amended]

25. In Appendix B, introductory text remove the word "model" and add, in its place, "required".

Appendix D—[Amended]

26. In Appendix D, under the heading "Introduction", in the second paragraph, in the sixth sentence, remove the cross- references to "682.406(a)(2), (a)(4), and 682.413(b)(1)" and add, in their place, "682.406(a)(3), (a)(5), and 682.413(b)"; in the third paragraph, in the first sentence, remove "45-day", and add, in its place, "90-day"; remove the cross-reference to "§ 682.406(a)(4)" and add, in its place, "§ 682.406(a)(3) and (a)(5)"; in the fourth sentence, remove the cross-reference to "682.406(a)(5)" and add, in its place, "682.406(a)(7)"; in the fifth sentence, remove the cross- reference to "682.406(a)(6)" and add, in its place, "682.406(a)(7)"; in I. WAIVER POLICY, A. Definitions, in the definition of "Gap", under the Note, in the second sentence, remove "For" and add, in its place, "This definition applies to"; remove the comma after "1986", and add, in its place, a period and "For such loans,"; in B. General, in paragraph 5., in the second sentence, remove the sentence beginning "In that case" to the end of the paragraph, and add, in its place, "Guarantors must review the due diligence for the 180-day period prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower."; in E. Cures for Timely Filing Violations and Certain Due Diligence Violations, in paragraph

2. Death, Disability, and Bankruptcy claims., in the second paragraph, in the third sentence, remove "treat the loan as in default" and add, in its place, "return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim"; in II. DUE DATE OF FIRST PAYMENT, in the first paragraph, in the first sentence, remove the citation to "Section 682.411(b)", and add, in its place, "Section 682.411(b)(1)"; at the end of the first paragraph, add the parenthetical phrase "(Unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E).)"; in the second paragraph, in the fifth sentence, add after "notice.", the parenthetical phrase "(Unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E).)"; in the second paragraph, in the last sentence, remove "20" and add, in its place, "30"; after the last paragraph, add a new paragraph to read, "Please Note: References to the "65th day after receipt of the notice" and "66th day" in the preceding paragraphs should be amended to read "95th day" and "96th day" respectively for lenders subject to § 682.209(a)(3)(ii)(E)."; in "III. QUESTIONS AND ANSWERS", at the end of the first paragraph, add a note to read, "Note: The answer to questions 1 and 4 are applicable only to loans subject to § 682.411 of the FFEL and PLUS program regulations published on November 10, 1986."; in the second paragraph, before "Q", add "1."; in the fourth paragraph, before "Q", add "2."; in the sixth paragraph, before "Q", add "3."; in the eighth paragraph, before "Q", add "4.".

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Part IX

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992 (Pub. L. 102–325). Public Law 102–325 added new section 428J to the HEA which authorizes the Secretary to establish a demonstration program for loan forgiveness for certain types of professional or public service. Under section 428J of the HEA, the Secretary is authorized to forgive portions of Federal Stafford Loans incurred by a student borrower who performs volunteer service or works in certain teaching or nursing areas. Minor changes to section 428J were made by the National and Community Service Trust Act of 1993 (Pub. L. 103–82). Section 428J was also recently amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). Those additional statutory changes are also reflected in these regulations. This program is not currently funded.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of the information collection requirements in § 682.215. The information collection requirements in § 682.215 will become effective on July 1, 1995, or after these requirements have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published later in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U. S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: New section 428J of the HEA authorizes the Secretary to promulgate regulations to establish a loan forgiveness demonstration program in the Federal Stafford Loan Program. The purpose of the demonstration program is to encourage individuals to enter the teaching and nursing professions and to perform national and community service by offering partial Federal Stafford loan forgiveness. If funding is provided, the loan forgiveness program is available only to new borrowers who, as of October 1, 1989, had no outstanding debt on a FFEL Program loan.

On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 682 in the **Federal Register** (59 FR 9376). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Eligibility requirements for a borrower who wishes to qualify for loan forgiveness (page 9378);
- Application procedures for loan forgiveness (page 9378);
- Limitations of the loan forgiveness program (page 9378);
- Requirements for borrowers desiring loan forgiveness under the teaching, volunteer service or nursing categories (pages 9378–9379);
- Percentages of loan amounts eligible for forgiveness based on year of service completed (page 9379).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.215(c) Application

- The Secretary has defined September 1 as the earliest date in which a borrower can apply for loan forgiveness in addition to the October 1 deadline for submitting applications.
- The Secretary has clarified that borrowers who submit incomplete and inaccurate loan forgiveness applications will not be considered for loan forgiveness unless and until a completed application is submitted.

Section 682.215(i) Definitions

- The Secretary has expanded the definition of both "elementary school" and "secondary school" to include nonprofit private day or residential schools to be consistent with the definition for these terms in the Perkins Loan Program definitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

Section 682.215(a) General

Comment: Some commenters noted that there is no formal method specified in the regulations to inform borrowers about the loan forgiveness program. The commenters recommended that details be provided to borrowers in the application/promissory note or the disclosure statement. The commenters did not believe that lenders should be required to do a special mailing.

Discussion: The Secretary will ensure that guaranty agencies take steps to inform borrowers about the loan forgiveness program should the program be funded. These methods may include mention in the application/promissory note or disclosure statement or in public documents such as the Student Guide. Lenders will not be expected to publicize the program through a special mailing.

Change: None.

Comment: A commenter recommended that the definition of eligible borrower be clarified to convey that a borrower who had paid off an outstanding debt under the FFEL programs prior to October 1, 1989 would be eligible for the forgiveness program if the borrower became a "new" borrower with their first disbursement of a new FFEL program loan on or after October 1, 1989.

Discussion: The Secretary believes that the regulations convey that a borrower who has no outstanding debt under the FFEL programs as of October 1, 1989 would qualify as an eligible borrower.

Change: None.

Comment: A commenter asked if lenders would be required to produce a new repayment schedule for a borrower each year loan forgiveness is granted. The commenter also suggested that the percentages of loan forgiveness should

have no effect on the borrower's current payments.

Discussion: The Secretary does not believe that it is necessary for a lender to provide new repayment schedules to borrowers who receive loan forgiveness. The Secretary expects that the reduction of the loan amount owed by a borrower as a result of the loan forgiveness will most likely result in a reduction of the number of payments to be made by the borrower.

Change: None.

Comment: A commenter asked if all Federal Stafford loans were eligible for forgiveness under this demonstration program.

Discussion: The Secretary agrees that the regulations should be clarified to explain that subsidized, unsubsidized, and nonsubsidized Federal Stafford loans will be eligible for forgiveness under § 682.215.

Change: The final regulations have been revised to incorporate this clarification.

Comment: One commenter urged the Secretary to include loans made under the Federal Direct Student Loan Program to be eligible for the forgiveness program. The commenter believed that since the Omnibus Budget Reconciliation Act of 1993 stated that all terms and conditions under the Federal Stafford Loan Program, which include cancellation, deferment and other provisions, also apply to the Federal Direct Student Loan Program, Congress intended for the loan forgiveness program to be included as well.

Discussion: The Secretary agrees with the commenter that loans made under the Federal Direct Student Loan Program are eligible for the forgiveness program. Direct Loan regulations will specify Direct Loan borrowers' eligibility for loan forgiveness under this program.

Change: None.

Comment: Some commenters believed that the Secretary should provide timeframes and procedures by which to notify borrowers of their approval or denial of loan forgiveness eligibility. The commenters were also interested in knowing the timeframes and procedures that the Secretary will adopt to notify the holder regarding which borrowers will receive forgiveness and when the holder will be given the appropriate funds.

Discussion: The borrower will be informed of his or her eligibility for loan forgiveness by the Secretary in a timely manner. The Secretary will take appropriate steps to inform holders of proper procedures. However, the Secretary notes that without knowing the amount of appropriations, if any, that might be available for the forgiveness program and the potential number of recipients, it is impossible to define those methods in these regulations.

Change: None.

Comment: Some commenters expressed concern about borrower confusion regarding the borrower's repayment obligation if the borrower is eligible for loan forgiveness. The commenters were worried about the period of time between when a borrower applies for loan forgiveness and the holder's receipt of the loan forgiveness payment from the Secretary. The commenters wanted to know how the servicer would be notified that the borrower's loan or loans are eligible for loan forgiveness and whether the borrower would be required to continue to make regular monthly payments in the time period between the loan forgiveness application submission and payment from the Secretary.

Discussion: The Secretary recognizes the potential problems created by this structure. Because this program is not an entitlement, the Secretary cannot promise an otherwise eligible borrower that funding will be available to award a percentage of loan forgiveness. Therefore, the Secretary reminds the commenters that the borrower is still in repayment on his or her loan, regardless of eligibility for the loan forgiveness unless he or she is in an authorized deferment or forbearance period.

Change: None.

Comment: One commenter wanted to know if a borrower could participate in both a state forgiveness program as well as this demonstration program.

Discussion: Although the National and Community Service Act of 1990 (42 U.S.C. 12571 *et seq.*) precludes a borrower from receiving a loan cancellation benefit under both that program and this loan forgiveness program, the Secretary believes that a borrower participating in the loan forgiveness program under § 682.215 is eligible to participate in state forgiveness programs, where allowable by the state.

Change: None.

Section 682.215(b)

Comment: Some commenters believed that in the instances where a defaulted borrower made satisfactory repayment arrangements on the loans in default, a borrower should be allowed to have those defaulted loans forgiven as well. The commenters believed that if the motivation behind the demonstration program was to encourage borrowers to enter into public service, then defaulted borrowers could be further enticed into public service by being allowed to "work off" their defaulted loans as well as those not in default.

Discussion: This issue was thoroughly discussed at the negotiated rulemaking sessions that preceded publication of the NPRM. Given that there may be limited or no funding for this program, the Secretary felt that it would be inappropriate to provide this benefit on loans that are still in default.

Change: None.

Comment: A commenter recommended that the Secretary and the guaranty agencies establish a way to easily verify that satisfactory repayment arrangements had been made on a loan that is to be considered eligible for loan forgiveness.

Discussion: The Secretary encourages guaranty agencies to provide appropriate information to lenders regarding a borrower's loan status. Additionally, the Secretary anticipates that the National Student Loan Data System will assist in providing this type of information.

Change: None.

Comment: Two commenters recommended that the Secretary should encourage guaranty agencies to consider those borrowers who have defaulted on their loans but are likely to be eligible for loan forgiveness to be good candidates for a rehabilitated loan.

Discussion: The Secretary believes that it is illogical to conclude that eligibility for one program assures eligibility for another. The loan rehabilitation program has specific requirements separate from the forgiveness program.

Change: None.

Comment: One commenter requested that the Secretary clarify that defaulted loans that have been rehabilitated should be eligible for forgiveness.

Discussion: The Secretary agrees with the commenter. Once a loan has been rehabilitated it is no longer in default and is therefore considered to be eligible for forgiveness under this program.

Change: The final regulations have been revised to incorporate this clarification.

Section 682.215(c)

Comment: Three commenters urged the Secretary to develop a standardized loan forgiveness application form that includes such data items as borrower dates of service, loan balance information, eligibility, and interest amounts in order to simplify the process.

Discussion: The Secretary agrees and is committed to consulting with FFEL participants to develop a standardized

application form pursuant to the requirements of section 432(1) of the HEA.

Change: None.

Comment: One commenter questioned to whom the term "designee" in § 682.215(c) refers. The commenter also recommended that the Secretary provide the designee with a means by which to identify and verify that a certain type of facility, tax-exempt organization or teacher shortage area meets the criteria of § 682.215. The commenter suggested that a more suitable alternative would be to require the certifying official to certify that the organization meets the requirements of § 682.215.

Discussion: The term "designee" refers to the departmental official assigned with implementing this program. The Secretary will provide the designee with all necessary information at the appropriate time if necessary. The Secretary notes that the NPRM provided that the certifying official in each category of forgiveness certify that the borrower's service meets the requirements of § 682.215.

Change: None.

Comment: In considering the October 1 deadline for submitting forgiveness applications, some commenters recommended that the regulations define a specific timeframe as to the earliest date an application for forgiveness may be received. They reasoned that since funding for this program may be limited and will be awarded on a first-come, first-served basis, applicants should be informed of the first date upon which they can apply. The commenters also wished to know whether a borrower need complete the service prior to applying for forgiveness or merely have completed service before the October 1 deadline.

Discussion: The Secretary agrees with the commenters that a borrower should be informed of the first date on which a forgiveness application can be received. A borrower's application for forgiveness should be postmarked no earlier than September 1 of each year that forgiveness is requested. The Secretary has chosen the September start date in order to be fair to all categories of borrowers, since certain professions have more definitive begin and end dates or terms that may end in June or July that would give them an advantage over other borrowers if the earliest date to apply was July or August. The Secretary also believes that it is appropriate to require that the service be completed prior to the borrower's submission of an application for forgiveness. This would result in fair treatment to the greatest number of borrowers and would eliminate the need to confirm that the borrower completed the service.

Change: The final regulations have been revised to include September 1 as the earliest date for forgiveness applications to be received.

Comment: A commenter asked if applications for forgiveness should be routed through the lender or guaranty agency or directly to the Secretary.

Discussion: Applications for loan forgiveness should be directed to the Secretary.

Change: None.

Comment: Some commenters felt that there should be a provision whereby a borrower who qualified for forgiveness one year but did not receive it due to limited funding should be first to be considered for forgiveness the following year. The commenters also wanted to know if a borrower who qualified and received the forgiveness one year would be automatically eligible for the following year's forgiveness.

Discussion: This approach was discussed at the negotiated rulemaking sessions. The Secretary believes that given the limited amount of funding, there is no statutory basis to allow eligible applicants from one year to automatically qualify for the next year. Similarly, borrowers who were denied forgiveness due to lack of funding one year will not be given priority over the next year's applicants. Borrowers are required to reapply for each year for which they wish to receive the forgiveness benefit.

Change: None.

Comment: Some commenters wanted to know how to treat a borrower's incomplete forgiveness application. The commenters asked whether a borrower should be disqualified, or if allowed to provide the missing information, how much time should a borrower have to submit the information. They also wanted to know if the borrower's first-come, first-served status would be affected by submitting an incomplete application.

Discussion: An incomplete or inaccurate application will not qualify a borrower for receiving loan forgiveness. However, the Secretary will attempt to notify the borrowers who submit inaccurate or incomplete applications so that they will have an opportunity to complete and submit a complete application by the October 1 deadline.

Change: None.

Comment: A number of commenters expressed confusion over the treatment of borrowers with regard to forbearance. Some commenters questioned whether forbearance for eligible borrowers under the forgiveness program was necessary or administratively feasible.

Discussion: The Secretary reminds the commenters that all borrowers who request forbearance while they are serving in areas that would qualify for forgiveness are entitled to forbearance as stated in section 428J. The ability to obtain forbearance is based on the borrower's being engaged in qualifying service and is not dependent on whether the borrower actually receives the loan forgiveness.

Change: None.

Comment: Some commenters asked when a borrower could request forbearance since the borrower does not apply for forgiveness until after the year of service has been completed. The commenters questioned whether forbearance would be granted retroactively at the time the borrower applied for forgiveness or if the lender or servicer would be expected to grant forbearance to a borrower the year prior to application while the borrower was serving in an eligible position. The commenters felt that the wording of the NPRM regarding forbearance may be confusing for a borrower who may think that payments do not have to be made during the period of service. The commenters also wished to know if the forbearance applied only to the loans eligible for forgiveness or on all loans.

Discussion: The Secretary wishes to emphasize that the holder or servicer is to grant forbearance to a borrower upon the borrower's request while the borrower is serving in one of the categories of service eligible for forgiveness under § 682.215. A borrower shall receive forbearance while serving regardless of whether sufficient funding is available for forgiveness at the end of that year of service. The forbearance will apply to all loans held by the borrower that would normally be entitled to forbearance. A borrower who is not in an authorized deferment or forbearance status while serving is expected to follow the terms of the promissory note regarding repayment.

Change: None.

Comment: Some commenters recommended that all borrowers in qualifying service that wish to apply for forbearance be given explicit instruction as to the terms of the forbearance and the fact that receiving forbearance for service under § 682.215 was not related to receiving loan forgiveness for performing qualifying service. The commenters were concerned that a borrower would be incurring additional costs with a forbearance with the potential of not receiving the loan forgiveness benefit for performing qualifying service.

Discussion: The Secretary shares the concerns of the commenters and expects holders to provide information on the option of forbearance under this program as is required under the FFEL programs. The holders will inform borrowers that funding, if available for this program, is limited and that receiving a forbearance during qualifying service does not guarantee loan forgiveness under this program and as such may result in additional costs to the borrower.

Change: None.

Section 682.215 (e), (f), and (g)

Comment: Some commenters asked that the Secretary clarify that a borrower must apply for forgiveness each year following the year of qualifying service in the teaching, volunteer and nursing categories.

Discussion: The Secretary anticipates that some eligible borrowers may have completed qualifying service in previous years that would not be immediately preceding the time in which they apply for this program. In this situation, the Secretary envisions that a borrower would need to indicate the begin and end date of the year of service, as all other eligible borrowers are required to do. Loan forgiveness, if funding is available, would be at the level based on which year the borrower last received forgiveness. For example, a borrower who qualified and received the benefit for the first year of service, but not the second year, who now qualifies for forgiveness for the third year of service would receive the benefit as a second year participant in the forgiveness program.

Change: The final regulations have been revised to clarify that a borrower must apply each year to obtain loan forgiveness under this demonstration program.

Section 682.215(h)

Comment: Some commenters asked whether all Federal Stafford loans are eligible for loan forgiveness. They recommended that if all Federal Stafford loans are eligible the Secretary should specify how the holder should apply the forgiveness amounts.

Discussion: The Secretary clarifies that unsubsidized, subsidized and nonsubsidized Federal Stafford loans are eligible for this forgiveness program and that the holder should apply the forgiveness amounts first to the unsubsidized portion, followed by the subsidized and then the nonsubsidized portion of the loans.

Change: The final regulations have been revised in both § 682.215(a) and § 682.215(h) to incorporate this clarification.

Comment: Some commenters are worried that holders and servicers do not link individual loans to the specific academic years when the borrower was in school and will therefore be unable to identify which years constitute the borrower's last two years of undergraduate education or two-year period when the borrower was obtaining a post graduate teaching or additional teaching certificate.

Discussion: The Secretary believes that holders and servicers are able to track loan amounts for this purpose because numerous existing program requirements already require such tracking. Loans are made based on statutory annual loan limits for applicable undergraduate and post baccalaureate academic levels. This data is available on a loan-by-loan basis for each borrower in lender and guaranty agency systems and should be sufficient for purposes of implementing these provisions.

Change: None.

Section 682.215(h)(5)

Comment: A commenter objected to the provision in the NPRM that states that payments eligible for forgiveness under this program that were already repaid by the borrower will not be refunded. The commenter noted that a prudent borrower may choose not to risk the additional costs of forbearance given the questionable funding for this program and continue to repay the loan, perhaps resulting in paying a loan amount that could have been forgiven but is now not eligible.

Discussion: The statute does not authorize the refunding of any repayment of a Federal Stafford loan.

Change: None.

Section 682.215(i)

Comment: A commenter recommended that the term "secondary school" should not include education beyond the twelfth grade. The commenter stated that this definition conflicts with the commonly recognized definition of postsecondary education in many states and thus may confuse those involved in postsecondary education.

Discussion: This definition was taken from already existing FFEL program regulations.

Change: None.

Comment: One commenter objected to the Secretary limiting the teaching forgiveness provision to borrowers who teach in public elementary and secondary schools. The commenter pointed out that section 428J provides forgiveness for those borrowers who teach full time in a school that qualifies under section 462(a)(2)(A) of the HEA for loan cancellation for Perkins loan recipients. The commenter noted that under the Perkins Loan Program, cancellation is provided for full-time teachers in nonprofit private elementary schools as well. The commenter requested that the Secretary make the definitions of elementary school and secondary school consistent with the Perkins definitions.

Discussion: The Secretary agrees with the commenter.

Change: The final regulations have been revised to include nonprofit private schools in the elementary school and secondary school definitions. This change allows those serving in these types of schools to be eligible under the teaching forgiveness category of § 682.215(e).

Comment: A commenter suggested that the Secretary expand the definitions that pertain to the nursing category of loan forgiveness. The commenter asked that the Secretary broaden the eligibility of sites to encourage more nursing graduates to participate in the forgiveness program.

Discussion: The Secretary consulted with the Secretary of Health and Human Services (HHS) in determining the definitions that would apply to the facilities described in section 428J in which a borrower would be employed full-time as a nurse. These definitions were taken from HHS and other existing regulations. The statute indicates that the Secretary is to rely on the expertise of HHS in these areas. Accordingly, there will be no change.

Change: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 10, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. A new § 682.215 is added to read as follows:

§ 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of unsubsidized, subsidized and nonsubsidized Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower worked in those professions or performed that service. For purposes of this section, an eligible borrower is a borrower who, as of October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she was employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or was serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or was performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, *full-time* means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default. Federal Stafford loans that have been rehabilitated are eligible for forgiveness.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary each year following a completed year of service, but no earlier than September 1 and no later than October 1 of a given year. The application must be in writing, on a form provided by the Secretary and according to procedures established by the Secretary. An eligible borrower must complete a year of service prior to filing a loan forgiveness application with the Secretary. Eligible borrowers are chosen on a first-come, first-served basis to participate and must receive forbearance upon request for each year of service for which forgiveness is requested. An eligible borrower must reapply each year to receive the forgiveness benefit. Incomplete or inaccurate applications are not considered in the first-come, first-served process. If a borrower initially submits an incomplete or inaccurate application, the borrower must provide a completed application to the Secretary or his designee prior to consideration in the selection process.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must have taught full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher has taught in a teacher shortage area if—

(i) The teacher taught in a school that satisfied the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher taught mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determined there was a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching—

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the State educational agency the borrower taught; and

(C) Verifying that the borrower taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(f) *Borrower eligibility; volunteer service forgiveness.* (1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must have served as a full-time volunteer for at least a year (defined as twelve consecutive months) under—

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performed service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower did not receive compensation that exceeds the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must—

(i) Have worked for an organization that provides services to low income persons and their communities to assist

them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, have given religious instruction, conducted worship services, engaged in religious proselytizing, or engaged in fund-raising to support religious activities.

(3) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested under paragraphs (f)(1), (f)(2), or (f)(3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower worked certifying—

(i) That the borrower served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must have been employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement from an authorized official where the borrower was employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower for—

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Federal Stafford loans for each of the first two years in which the borrower is awarded the benefit and meets the requirements of this section.

(ii) 20 percent of the total original principal amount for each of the third and fourth years.

(iii) 30 percent of the total original principal amount for the fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) Payments made by the Secretary must be applied first to the unsubsidized Federal Stafford portion of the loan, followed by the subsidized Federal Stafford portion, and then the nonsubsidized Federal Stafford portion.

(5) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(6) Payments received from a borrower who qualifies for loan forgiveness under this section may not be refunded.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public or nonprofit private day or residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments.

This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub.L. 100–579)—

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)—

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that—

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with

one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2, and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public or nonprofit private day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087–2)

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federal register

Friday
July 1, 1994

Part IX

Department of Education

34 CFR Part 685

Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC11

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final Standards, Criteria, and Procedures.

SUMMARY: The Secretary of Education issues standards, criteria, and procedures governing the repayment and consolidation of loans under the Federal Direct Student Loan (Direct Loan) Program in the academic year beginning July 1, 1994.

These standards, criteria, and procedures apply to loans under the Federal Direct Stafford Loans Program, the Federal Direct Unsubsidized Stafford Loans Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: July 1, 1994, with the exception of §§ 685.209, 685.213, 685.214, and 685.215. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to, and approved by, the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these sections, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lynn Mahaffie, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4060, ROB–3), Washington, DC 20202–5162. Telephone: (202) 708–9069. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). *See* Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. Borrowers under the Direct Loan Program are provided a range of repayment options, including an income contingent repayment plan.

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives have consulted with representatives of students, colleges, universities, proprietary schools, and educational associations, as well as representatives of the financial aid community, in developing this notice. In particular, the Secretary's representatives have had extensive consultations with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program. See the Secretary's announcement of his intention to establish this Committee at 58 FR 68619 (December 28, 1993).

This notice establishes the policies and procedures necessary to govern repayment of loans under the Direct Loan Program and to establish standards and procedures relating to Federal Direct Consolidation Loans for the 1994–1995 academic year.

I. Background

On September 10, 1993, the Secretary published a notice in the **Federal Register** (58 FR 47816) soliciting applications from schools for participation in the Direct Loan Program. Over 1,100 schools responded to that invitation. On December 28, 1993, the Secretary selected 104 schools, representing approximately five percent (5%) of the total Federal Family Education Loan (FFEL) Program loan volume, to participate in the Direct Loan Program for the academic year beginning July 1, 1994 (58 FR 68690). On January 4, 1994, the Secretary published a notice containing most of the standards, criteria, and procedures needed for the first-year implementation of the Direct Loan Program (59 FR 472). Cross-references in the repayment and consolidation provisions of this notice are to sections of 34 CFR Part 685 that were included in the rules published on January 4, 1994.

The repayment and consolidation rules in this notice complete the provisions needed for the first year of the program. These rules are applicable for the period beginning July 1, 1994, and ending June 30, 1995. As required by statute, program regulations for the Direct Loan Program in future years are being developed through the use of a negotiated rulemaking process to the extent practicable.

II. Summary of Contents

Section 685.204 Deferment

This section contains revisions to paragraphs (b) and (c) that clarify the deferment requirements for all Direct Loan borrowers. In addition, a new paragraph (d) states the deferment requirements for certain Direct Consolidation Loan borrowers.

Section 685.207 Obligation to Repay

This section contains provisions relating to a borrower's obligation to repay a Direct Loan that generally parallel provisions applicable to the FFEL program. On the basis of consultations with members of the higher education community, the Secretary has included clarifying provisions concerning (1) the collection costs for which a borrower is responsible (in paragraph (a)); (2) the borrower's obligations upon re-enrolling in school after a loan has entered repayment (in paragraph (b)(1)); and (3) the date on which a grace period begins for a borrower who withdraws from a correspondence program (in paragraph (d)).

Section 685.208 Repayment Plans

This section contains descriptions of the various repayment plans required to be made available to Direct Loan borrowers by section 455(d)(1) of the HEA. To simplify the administration of the program, paragraph (a)(4) requires that all Direct Loans obtained by a borrower be repaid together under the same repayment plan. The sole exception to this requirement is that Direct PLUS loans, which are the only loans that may not be repaid under the income contingent repayment plan, may be repaid separately.

The features of the standard repayment plan that is comparable to the standard repayment plan under the FFEL program are described in paragraph (b). Generally, a borrower must repay the loan by making fixed monthly payments for ten years. Under the extended repayment plan described in paragraph (c), a borrower must repay the loan by making fixed monthly payments within an extended period of time of 12 to thirty years that varies with the borrower's debt level. The repayment period under this plan is the same as the period for repayment of a consolidation loan under the FFEL program.

Under the graduated repayment plan described in paragraph (d), a borrower must repay the loan by making monthly payments at two or more levels within the same period of time as the period applicable under the extended

repayment plan. The Secretary believes that this approach offers flexibility and at the same time enables a borrower to assess the relative benefits of various repayment plans with ease. As a result of consultation with members of the higher education community, this section provides that the Secretary may adjust the monthly payment amount under the standard, extended, and graduated repayment plans to reflect changes in the variable interest rate identified in § 685.202(a).

The income contingent repayment plan is summarized in paragraph (f) and described in detail in § 685.209 and Appendix B. Under this plan, a borrower may choose to repay Direct Loans in one of two ways described in § 685.209. A borrower's monthly repayment amount generally varies with the Adjusted Gross Income (AGI) reported by the borrower, the amount of the borrower's Direct Loan debt, and family size. Specific provisions in § 685.209 apply in the case of a married couple who wish to repay their Direct Loans jointly. Payments under the income contingent repayment plan increase progressively with debt to discourage excessive borrowing and to ensure that most borrowers repay their loans within the 25-year period allowed by the statute. The borrower is not required to repay any amount that remains outstanding at the end of the repayment period.

The Secretary intends to review periodically the method for calculating monthly repayment amounts under the income contingent repayment plan. However, if the Secretary amends the regulations governing that method, the regulations in effect when a borrower's first Direct Loan enters repayment determine the monthly repayment amount for all the borrower's Direct Loans unless the borrower requests otherwise.

The alternative repayment plan provisions in paragraph (g) implement the Secretary's statutory authority to provide an alternative plan, on a case-by-case basis, to a borrower who can demonstrate that none of the other available plans can accommodate the borrower's exceptional circumstances.

Section 685.209 Income Contingent Repayment Plan

This section contains provisions governing the two options available for repayment of Direct Loans under the income contingent repayment plan (ICRP). The ICRP is designed to be attractive to a broad range of borrowers. The plan provides reasonable monthly repayment amounts for borrowers with varying amounts of debt and income and ensures that most borrowers repay their loans in a reasonable amount of time. The plan also addresses excessive borrowing through a payback rate that rises as debt increases. Examples of the calculation of monthly repayment amounts under both options are included in Appendix B to the regulations.

Option 1. Calculation of the monthly payment under Option 1 of the ICRP is described in paragraph (b). In general, the borrower's annual repayment obligation is the borrower's AGI multiplied by a "payback rate" that is based on the borrower's debt. The monthly payment is the annual repayment obligation divided by 12, minus an adjustment for family size. The "payback rate" varies from four to 15 percent, calculated as described in paragraph (b)(2). The family size adjustment is seven dollars per dependent for up to five dependents. If the calculated monthly payment is less than $25, the borrower is not required to make a payment. When a borrower is not required to make a payment, the principal amount is unchanged and interest on the principal accrues and may be capitalized.

Option 2. Calculation of the monthly payment under Option 2 of the ICRP is described in paragraph (c). In general, under this option, a borrower's monthly payment is the same as under Option 1 except that no payment exceeds the monthly amount the borrower would repay over 12 years using standard amortization. If a borrower chooses this option: (1) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income; (2) the borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum repayment period described in § 685.209(d)(2)(i); and (3) interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest is reached.

Joint repayment by married borrowers. This section includes provisions for joint repayment of Direct Loans by married borrowers. A step-by-step calculation of a combined amount is included as Example 2 in Appendix B.

Repayment period. Provisions governing the repayment period under the ICRP are contained in paragraph (d)(2). The maximum period is 25 years, excluding periods of authorized deferment and forbearance under §§ 685.204 and 685.205, respectively, and periods in which the borrower made payments under another repayment plan. The Secretary believes the exclusion of repayment periods under other plans is needed to prevent abuses through which a borrower might be able to avoid repaying a portion of the loan by shifting from one plan to another as the borrower's income changed.

If a borrower repays more than one loan under the ICRP and the loans enter repayment at different times, a separate repayment period for each loan begins when the loan enters repayment. This approach ensures that no loan will be repaid under the ICRP for more than 25 years. If loans enter repayment at the same time, a single repayment period applies.

To encourage borrowers to begin repaying their loans and to limit negative amortization at the beginning of the repayment period, a borrower must make monthly payments of accrued interest until the Secretary calculates the borrower's monthly payment on the basis of the borrower's income. A borrower who is unable to make monthly payments of accrued interest or qualify for a deferment under § 685.204 may request forbearance under § 685.205.

Limit on capitalization of interest. The Secretary believes a limit on the amount of interest that is added to principal (the capitalization of interest) is desirable to prevent an excessive increase in a borrower's debt burden when the borrower's income is insufficient to cover accruing interest. Paragraph (d)(3) permits capitalization of unpaid interest until the outstanding principal amount increases to one and one-half times the original principal amount. Thereafter, unpaid interest accrues but is not capitalized.

Consent to disclosure of tax return information. In order to repay a Direct Loan under the ICRP, a borrower must consent, on a form provided by the Secretary, to the disclosure of certain tax return information by the Internal Revenue Service to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan. The information subject to disclosure is taxpayer identity information as defined in 26 U.S.C. 6103(b)(6) (including such information as name, address, and social security number), tax filing status, and AGI. Paragraph (d)(5) describes the procedures for providing written consent and requires that consent be provided for a period of five years. If a borrower selects the ICRP but fails to provide or renew consent, or withdraws consent without selecting a different repayment plan, the Secretary

designates the ten-year standard repayment plan for the borrower.

Section 685.210 Choice of Repayment Plan

This section governs a borrower's initial selection of a repayment plan and the borrower's ability to change plans thereafter. Before a Direct Loan enters repayment, the Secretary sends the borrower a description of the available repayment plans and requests the borrower to select one. If the borrower does not select a plan within 45 days, the Secretary designates the standard repayment plan for the borrower.

To accommodate the many changes in life circumstances that a borrower may experience over the life of a loan, the Secretary has placed no limit on the number of times a borrower may change plans, other than limits on a borrower who is repaying a defaulted loan under the ICRP. Such a borrower must demonstrate a consistent pattern of repayment and obtain the Secretary's approval before changing repayment plans. Under § 685.209(a)(2), a borrower may change options under the ICRP no more frequently than once a year.

A borrower may change to the ICRP at any time, but may not change to any other plan if that plan has a maximum repayment period of less than the period the loan has already been in repayment. For example, a borrower who makes payments for 12 years under the extended repayment plan may not change to the standard repayment plan, which has a ten-year repayment period. The repayment period under the new plan is calculated from the date the loan initially entered repayment, except in the case of the ICRP (see § 685.209(d)(2)). Thus, if a borrower who repays a loan under the extended repayment plan for three years and then changes to the standard repayment plan, the borrower has seven more years to repay the loan.

Section 685.211 Miscellaneous Repayment Provisions

This section governs an assortment of topics relating to the repayment of Direct Loans. Paragraph (a) permits a borrower to prepay all or part of a loan at any time and states how a prepayment is applied in the absence of a contrary request from the borrower. Paragraph (b) states how the Secretary applies a refund due to a borrower from a school. Paragraph (c) describes the effects of a borrower's default on a Direct Loan. Paragraph (d) sets out the standards by which the Secretary determines that a borrower is ineligible for some or all of a Direct Loan and describes how the Secretary seeks repayment of the loan.

Section 685.212 Discharge of a Loan Obligation

This section provides for the Secretary's discharge of the obligation of a borrower and any endorser to repay a loan if (1) the borrower (or the student on whose behalf a parent borrowed) has died; (2) the borrower has become totally and permanently disabled, as described in paragraph (b); (3) the borrower's obligation to repay is discharged in bankruptcy; (4) the borrower meets the criteria in § 685.213, relating to closed schools; or (5) the borrower meets the criteria in § 685.214, relating to false certification or unauthorized disbursement.

Section 685.213 Closed School Discharge

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if the borrower (or student on whose behalf the parent borrowed) did not complete the program of study for which the loan was made because the school closed. The provisions of this section are modeled on provisions for the FFEL program published on April 29, 1994, in order to provide borrowers with comparable protection under both programs (see 59 FR 22462). The qualifications for discharge under this section are set out in paragraphs (c) through (e). Among other requirements, a borrower must cooperate with the Secretary in any judicial or administrative proceeding to recover for amounts discharged or to take related enforcement action, and must transfer any rights to a loan refund to the Secretary. The discharge procedures used by the Secretary are described in paragraph (f).

Section 685.214 Discharge for False Certification of Student Eligibility or Unauthorized Disbursement

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if (1) a school falsely certifies the loan eligibility of the borrower (or the student on whose behalf a parent borrowed), or (2) the school endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer without authorization. The provisions of this section are modeled on provisions for the FFEL program published on April 29, 1994, in order to provide borrowers with comparable protection under both programs (see 59 FR 22462). Additional actions that the Secretary may take against unscrupulous schools are described in the preamble to that document.

The qualifications for discharge under this section are set out in paragraph (c) and include the requirements in § 685.213 relating to cooperation with the Secretary in enforcement actions and transfers to the Secretary of any rights to a loan refund. The discharge procedures used by the Secretary are described in paragraph (d).

Section 685.215 Consolidation

This section contains provisions governing the consolidation of certain Federal education loans into Federal Direct Consolidation Loans.

Eligible loans. The types of loans that may be consolidated under this section are listed in paragraph (b) and include all loans made under the Federal Family Education Loan (FFEL) Program, the Direct Loan Program, and the National Direct Student Loan Program, as well as certain loans made under the Public Health Service Act. The Secretary has included consolidation loans made under the FFEL program to permit all FFEL borrowers to participate in the income contingent repayment plan that is available only under the Direct Loan Program.

Types of Federal Direct Consolidation Loans. There are three types of Federal Direct Consolidation Loans—subsidized, PLUS, and unsubsidized consolidation loans. The loans that may be consolidated into each type of consolidation loan are listed in paragraph (c). Subsidized consolidation loans allow borrowers to continue to be free of the obligation to pay interest during authorized periods of deferment. PLUS consolidation loans are available for all loans made to parents on behalf of students. Unsubsidized consolidation loans are available for all other eligible types of loans.

Borrower eligibility. The eligibility requirements that a borrower must meet to obtain a Federal Direct Consolidation Loan are stated in paragraph (d). Direct Loan borrowers and any FFEL borrower who is unable to obtain an FFEL consolidation loan or an FFEL consolidation loan with income sensitive repayment terms acceptable to the borrower may consolidate their loans under the Direct Loan Program if they meet the other requirements of paragraph (d). With the exception of provisions taken from statute concerning the FFEL loans that may be consolidated into a Direct Loan, most of the requirements parallel requirements for the FFEL program.

The Secretary has included provisions that prevent consolidation by (1) a

borrower who is in default, unless the borrower has made satisfactory arrangements to repay the defaulted loan or agrees to repay the consolidation loan under the ICRP; and (2) a PLUS loan borrower with an adverse credit history at the time of consolidation, unless the borrower obtains an endorser or provides evidence of extenuating circumstances. Married borrowers may consolidate their loans jointly if they agree to be held jointly and severally liable on the consolidation loan and meet the other requirements of paragraph (d)(2).

Loan application and origination. A single application for one or more consolidation loans is permitted under paragraph (e). That paragraph also permits a borrower to add eligible loans upon request within 180 days after the date of the consolidation loan's origination. Provisions in paragraph (f) that govern origination of consolidation loans are taken from the FFEL program.

Interest rates. The Secretary has decided to apply to Federal Direct Consolidation Loans the same variable interest rates that apply to other Direct Loans. The Secretary believes these rates will be beneficial to most borrowers.

Repayment and refunds. As provided in paragraph (h), a borrower may repay a Federal Direct Consolidation Loan under any of the Direct Loan repayment plans, except that certain restrictions apply to defaulted borrowers, and the ICRP is not available to a PLUS consolidation loan borrower. The Secretary has included the exception for PLUS borrowers to provide consistency with the statutory prohibition against repayment of Direct Loans by parents under the ICRP. The provisions of paragraph (i) and (j), relating to repayment periods and repayment schedules, respectively, are taken from the FFEL program, as are provisions in paragraph (k), relating to a lender's obligations upon receiving a refund from a school on a loan that has been consolidated.

Joint consolidation loans. If two married borrowers obtain a joint consolidation loan, special provisions apply under paragraph (l). This paragraph provides that both borrowers must meet the requirements of the applicable section in order to obtain a deferment under § 685.204 or forbearance under § 685.205. To obtain a discharge under § 685.212, each spouse must qualify for one of the types of discharge described in that section. The Secretary discharges a portion of the loan if one spouse meets the requirements of § 685.212 (d) or (e).

III. Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the standards, criteria, and procedures in this notice.

The potential costs associated with the contents of this notice are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Secretary has determined that the benefits of these standards, criteria, and procedures justify the costs.

The Secretary has also determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The contents of this notice are consistent with the requirements of the HEA and promote the President's priorities.

IV. Paperwork Reduction Act of 1980

Sections 685.209, 685.213, 685.214, and 685.215 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this notice to the Office of Management and Budget for its review (44 U.S.C. 3504(h)).

This notice affects borrowers of Federal student loans authorized by title IV of the HEA and schools that administer the Direct Loan Program. The annual public reporting burden for the required collection of information is estimated to be 12,029 hours (an average of 59 minutes for each of the estimated 12,350 individuals who provide information regarding eligibility for a Federal Direct Consolidation Loan or income contingent repayment) including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

V. Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, Pub. L. 103–66 requires that the Secretary publish a notice in lieu of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act. In developing this notice, the Secretary's representatives have consulted extensively with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program, as well as other members of the higher education community. The statutory timeframe for the implementation of the program does not permit the solicitation of further public comment. A public comment period, while helpful, would seriously delay the provision of necessary guidance for the operation of the Direct Loan Program. Therefore, the Secretary finds that solicitation of public comments would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: June 28, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—STANDARDS, CRITERIA, AND PROCEDURES FOR THE DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a et seq.

2. Section 685.204 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 685.204 Deferment

* * * * *

(b) Except as provided in paragraph (d) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2) The borrower is seeking and unable to find full-time employment.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b)(2) or (3) of this section may exceed three years.

(d) If, at the time of consolidation, a Direct Consolidation Loan borrower has an outstanding balance on an FFEL Program loan that was made prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraph (b) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b)(7).

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Sections 685.207 through 685.215 are added to Subpart B to read as follows:

§ 685.207 Obligation to repay.

(a) *Obligation of repayment in general.* (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under § 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, and the discharge provisions in § 685.212.

(b) *Federal Direct Stafford Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments on a Federal Direct Stafford Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204(a)(1).

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make payments on a Federal Direct Stafford Loan.

(3) A borrower is not obligated to pay interest on a Federal Direct Stafford Loan for in-school or grace periods if the borrower is not required to make payments on the loan during those periods.

(4) The repayment period for a Federal Direct Stafford Loan begins when the six-month grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) *Federal Direct Unsubsidized Stafford Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments of principal on a Federal Direct Unsubsidized Stafford Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204(a)(2).

(2) (i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make any principal payments on a Federal Direct Unsubsidized Stafford Loan.

(3) A borrower is responsible for the interest that accrues on a Federal Direct Unsubsidized Stafford Loan during in-school and grace periods. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Federal Direct Unsubsidized Stafford Loan begins when the six-month grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Determining the date on which the grace period begins for students in correspondence programs.* The grace period for students enrolled in correspondence programs begins on the student's withdrawal date as determined under § 685.304(b)(3).

(e) *Federal Direct PLUS Loan repayment.* The repayment period for a Federal Direct PLUS Loan begins on the day after the loan is fully disbursed. Interest begins to accrue on the date the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(f) *Federal Direct Consolidation Loan repayment.* The repayment period for a Federal Direct Consolidation Loan begins on the day after the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.208 Repayment plans.

(a) *General.* (1) A borrower may repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, a Federal Direct Subsidized Consolidation Loan, or a Federal Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) A borrower may repay a Federal Direct PLUS Loan or a Federal Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (g) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that a borrower of a Federal Direct PLUS Loan or a Federal Direct PLUS Consolidation Loan may repay the Federal Direct PLUS Loan or the Federal Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(b) *Standard repayment plan.* (1) Under the standard repayment plan, a borrower shall repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) Periods of authorized deferment or forbearance are not included in the ten-year repayment period.

(3) A borrower's payments under the standard repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(4) The fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) *Extended repayment plan.* (1) Under the extended repayment plan, a borrower shall repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(4) The fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(d) *Graduated repayment plan.* (1) Under the graduated repayment plan, a borrower shall repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) The monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under the graduated repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50% of the payment amount that would be required under the standard repayment plan, or more than 150% of the payment amount that would be required under the standard repayment plan.

(e) *Repayment period for the extended and graduated plans.* Under the extended and graduated repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than $10,000, the borrower shall repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower shall repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower shall repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower shall repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower shall repay the loans within 30 years of entering repayment.

(f) *Income contingent repayment plan.* (1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's (and, in some circumstances, the borrower's spouse's) Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. In the case of a married borrower who files a joint Federal income tax return and is not repaying loans jointly with a spouse under § 685.209(a)(3), the borrower's AGI includes the income of the borrower's spouse. A borrower shall make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower's first Direct Loan enters repayment govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(3) Provisions governing the income contingent repayment plan are set out in § 685.209.

(g) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (f) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) If a borrower's payment under the alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is added to the principal balance of the loan.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.209 Income contingent repayment plan.

(a)(1) Under the income contingent repayment plan described in § 685.208(f), a borrower may choose to repay Direct Loans in one of two ways. The borrower's options are described in paragraphs (b) and (c) of this section.

(2) A borrower may change options under the income contingent repayment plan by notifying the Secretary in writing. However, a borrower may change options no more frequently than once a year. The Secretary annually provides the borrower with estimates of monthly payment amounts under each option.

(3) The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) Married borrowers may repay their loans jointly if they meet the following requirements:

(i) Each spouse is repaying a Direct Loan under the same option of the income contingent repayment plan.

(ii) The spouses filed a joint Federal income tax return for the most recent year for which the Secretary has obtained income information.

(iii) The spouses submit a written request that includes their names and social security numbers to the Secretary.

(5) Examples of the calculation of the monthly repayment amounts under both options of the income contingent repayment plan are included in Appendix B to this part.

(b) *Option* 1. (1) *General.* (i) In general, under Option 1, a borrower shall make monthly payments calculated using a percentage of the borrower's Adjusted Gross Income (AGI) called the "payback rate." The payback rate is based upon the total amount of the borrower's Direct Loans, as described under paragraph (b)(2) of this section. The minimum payback rate is four percent, and the maximum rate is 15 percent.

(ii) If a borrower provides documentation acceptable to the Secretary that the borrower has one or more dependents other than the borrower's spouse, the Secretary subtracts from the borrower's monthly payment a family size adjustment of seven dollars per dependent for up to five dependents.

(iii) A borrower's monthly payment is equal to the borrower's AGI multiplied by the payback rate, divided by 12 months, minus the family size adjustment amount. However, if the monthly repayment amount is less than

$25, the borrower is not required to make a payment.

(2) *Payback rate.* (i) A borrower's payback rate is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment and does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (a)(4) of this section. If the borrower obtains another Direct Loan, a new payback rate for all of the borrower's Direct Loans is calculated on the basis of the combined amounts of the loans when they entered repayment.

(ii) If the total amount of a borrower's Direct Loans is less than or equal to $1,000, the payback rate is four percent. If the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is four percent plus an additional percent that begins at zero and increases at a rate of 0.2 percent for each additional $1,000 borrowed up to a maximum payback rate of 15 percent.

(iii) More specifically, if the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is the lesser of 0.15 or the following: 0.04 + (debt − 1,000) (0.000002).

(3) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section. The amount of a borrower's individual monthly payment amount is applied to that borrower's debt. The payback rate for each borrower is calculated separately on the basis of the amount of the borrower's Direct Loans. For purposes of this paragraph, the Secretary assumes that the AGI for each borrower is proportionate to the relative size of the borrower's individual debt and subtracts one half of the applicable family size adjustment from each borrower's monthly payment amount. If the combined monthly repayment amount is less than $25, the borrowers are not required to make a payment.

(c) *Option 2.* (1) *General.* (i) In general, under Option 2, a borrower shall make monthly payments as calculated under Option 1, except that no monthly payment exceeds the amount the borrower would repay over 12 years using standard amortization. The Secretary calculates the 12-year standard amortization amount on the basis of the interest rate in effect when the borrower chooses Option 2. The amount a borrower would repay over 12 years using standard amortization is determined without any family size adjustment or minimum monthly repayment amount.

(ii) More specifically, if a borrower chooses Option 2 under the income contingent repayment plan—

(A) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income;

(B) The borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum period described in § 685.209(d)(2)(i)); and

(C) Interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest in paragraph (d)(3) of this section is reached.

(iii) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section, unless the combined amount exceeds the 12-year standard amortization amount. If the combined amount exceeds the 12-year standard amortization amount, the couple pays the 12-year standard amortization amount, and the amount applied to each borrower's debt is determined by calculating the 12-year standard amortization amount for that borrower's debt.

(d) *Other features of the income contingent repayment plan.* (1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period does not include periods in which the borrower makes payments under the standard, extended, graduated, or alternative repayment plan or periods of authorized deferment or forbearance.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

(3) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount increases to one and one-half times the original principal amount. After the outstanding principal amount reaches one and one-half times the original amount, interest continues to accrue but is not capitalized.

(4) *Notification of terms and conditions.* When a borrower selects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including—

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in § 685.209(a)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(5) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)–1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary consults with the borrower prior to establishing a repayment plan for the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan within 45 days after the Secretary provides the borrower with a description of available repayment plans, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary in writing. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under § 685.211(c)(3)(ii) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(2) (i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to the income contingent repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided for under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan, the repayment period is calculated as described in § 685.209(d)(2).

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) The Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Refunds from schools.* The Secretary applies any refund due to a borrower that the Secretary receives from a school under § 668.22 to the borrower's outstanding principal.

(c) *Default.* (1) *Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with § 685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, a Federal Direct Unsubsidized Consolidation Loan or a Federal Direct Subsidized Consolidation Loan, the Secretary may designate the income contingent repayment plan for the borrower.

(d) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (d)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days of the borrower's receipt of the letter, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (d)(2) of this section, the borrower is in default.

(4) A borrower may not consolidate a loan under § 685.215 for which the borrower is wholly or partially ineligible.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.212 Discharge of a loan obligation.

(a) *Death.* If the Secretary receives acceptable documentation that a borrower (or the student on whose behalf a parent borrowed) has died, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(b) *Total and permanent disability.* If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. A borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower or any endorser to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in § 685.213, the Secretary discharges the obligation of

the borrower and any endorser to make any further payments on the loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(f) *Payments received after eligibility for discharge.* The Secretary returns to the sender or, for a discharge based on death, the borrower's estate, those payments received after the requirements for discharge have been met.

(g) *Loan forgiveness demonstration program.* If funds are appropriated for the loan forgiveness demonstration program authorized by section 428J of the Act, the Secretary follows the procedures and applies the standards in 34 CFR 682.215 for borrowers under the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.213 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall—

(1) State that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(3) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover for amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower

on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

(a) (1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Admitted the student on the basis of ability to benefit from its training and the student did not meet the requirements for admission described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; or

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the following requirements:

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan to attend a school;

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; and

(iii) Either—

(A) Withdrew from the school and did not find employment in the occupation for which the training program was intended; or

(B) Completed the training program for which the loan was made, attempted to obtain employment in the occupation for which the program was intended, and was not able to find employment in that occupation or obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower shall—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower shall—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Claim to third party.* The borrower shall state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(5) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third

party to the Secretary as described in § 685.213(e).

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.215 Consolidation

(a) *Federal Direct Consolidation Loans.* A borrower may consolidate one or more education loans made under certain Federal programs into one or more Federal Direct Consolidation Loans. Loans consolidated into a Federal Direct Consolidation Loan are discharged when the Federal Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Federal Direct Consolidation Loan:

(1) Federal Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Federal Direct Stafford Loans.

(5) Federal Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Federal Direct PLUS Loans.

(12) Federal Direct PLUS Consolidation Loans.

(13) Federal Unsubsidized Stafford Loans.

(14) Federal Supplemental Loans for Students (SLS).

(15) Federal Consolidation Loans.

(16) Federal Direct Unsubsidized Stafford Loans.

(17) Federal Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL).

(20) Health Education Assistance Loans (HEAL).

(21) Other loans made under subpart II of part A of title VII of the Public Health Service Act.

(c) *Types of Federal Direct Consolidation Loans.* (1) The loans identified in paragraphs (b) (1) through (8) may be consolidated into a Federal Direct Subsidized Consolidation Loan.

(2) The loans identified in paragraphs (b) (9) through (12) may be consolidated into a Federal Direct PLUS Consolidation Loan.

(3) The loans identified in paragraphs (b) (13) through (21) may be consolidated into a Federal Direct Unsubsidized Consolidation Loan.

(d) *Eligibility for a Federal Direct Consolidation Loan.* (1) A borrower may obtain a Federal Direct Consolidation Loan if, at the time the borrower applies for such a loan, the borrower meets the following requirements:

(i) The borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and asserts either—

(*1*) That the borrower is unable to obtain an FFEL consolidation loan; or

(*2*) That the borrower is unable to obtain an FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program.

(ii) On the loans being consolidated, the borrower is—

(A) In a six-month grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory arrangements to repay the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in § 685.208(f) and signs the consent form described in § 685.209(b)(5).

(iii) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(iv) The borrower agrees to notify the Secretary of any change in address.

(v) In the case of a Federal Direct PLUS Consolidation Loan—

(A) The borrower may not have an adverse credit history as defined in § 685.200(b)(7)(ii); or

(B) If the borrower has such an adverse credit history, the borrower shall obtain an endorser for the consolidation loan who does not have an adverse credit history or provide documentation satisfactory to the Secretary that extenuating circumstances relating to the borrower's credit history exist.

(2) Two married borrowers may consolidate their loans together if they meet the following requirements:

(i) At least one spouse meets the requirements of paragraph (d)(1)(i) of this section.

(ii) Both spouses meet the requirements of paragraphs (d)(2) (ii) through (v) of this section.

(iii) Each spouse agrees to be held jointly and severally liable for the repayment of the total amount of the consolidation loan and to repay the loan regardless of any change in marital status.

(e) *Application for a Federal Direct Consolidation Loan.* To obtain a Federal Direct Consolidation Loan, a borrower or borrowers shall submit a completed application to the Secretary. A single application may be used for one or more consolidation loans. A borrower may add eligible loans to a Federal Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Federal Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation an amount equal to the unpaid balance, accrued interest, fees, and collection costs due on the loan.

(2) Upon receipt of the proceeds of a Federal Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on

the consolidated loan. The holder of a consolidated loan must return to the borrower the promissory note marked "paid-in-full."

(3) The principal balance of a Federal Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge the borrower's obligation on the loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Federal Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge the borrower's obligation on the loan, the lender shall notify the Secretary in writing of the remaining amount due on the loans. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Federal Direct Subsidized Consolidation Loan or a Federal Direct Unsubsidized Consolidation Loan is the rate established for a Federal Direct Stafford Loan under § 685.202(a)(1). The interest rate on a Federal Direct PLUS Consolidation Loan is the rate established for a Federal Direct PLUS Loan under § 685.202(a)(2).

(h) *Repayment plans.* A borrower may repay a Federal Direct Consolidation Loan under any of the repayment plans described in § 685.208, except that—

(1) A borrower may not repay a Federal Direct PLUS Consolidation Loan under the income contingent repayment plan; and

(2) A borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(D) of this section shall repay the consolidation loan under the income contingent repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) The repayment period for a Federal Direct Consolidation Loan begins on the day after the loan is disbursed.

(2) Under the extended or graduated repayment plan, the Secretary determines the repayment period under § 685.208(e) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraph (i)(3) of this section.

(3) (i) The total amount of outstanding balances on the other education loans used to determine the repayment period under the graduated or extended repayment plan may not exceed the amount of the Federal Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(j) *Repayment schedule.* (1) The Secretary provides a borrower of a Federal Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (d)(2) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds received from schools.* If a lender receives a refund from a school on a loan that has been consolidated into a Federal Direct Consolidation Loan, the lender shall—

(1) Transmit the refund and an explanation of the source of the refund to the Secretary within 30 days of receipt; and

(2) Inform the borrower in writing that the lender has received the refund and transmitted it to the Secretary.

(l) *Special provisions for joint consolidation loans.* The provisions of paragraphs (l)(1) through (3) of this section apply to a Federal Direct Consolidation Loan obtained by two married borrowers.

(1) *Deferment.* To obtain a deferment on a joint Federal Direct Consolidation Loan under § 685.204, both borrowers shall meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Federal Direct Consolidation Loan under § 685.205, both borrowers shall meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Federal Direct Consolidation Loan under § 685.212, each borrower shall meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under § 685.212 (d) or (e) on a loan that was consolidated into a joint Federal Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in § 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of § 685.212 (d) or (e), as applicable.

(Authority: 20 U.S.C. 1078–8, 1087a et seq.)

4. A new Appendix B is added to part 685 to read as follows:

Appendix B—Income Contingent Repayment Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans and an Adjusted Gross Income (AGI) of $25,000.

Step 1: Under either Option 1 or Option 2, calculate the payback rate. Because the borrower's debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii), as follows:

- Subtract $1,000 from the total amount of the borrower's Direct Loans: ($12,500 − $1,000=$11,500).
- Multiply the result by 0.000002: $11,500×0.000002=0.023).
- Add the result to 0.04: (0.04+0.023=0.063).
- The result is the payback rate.

Step 2: Compare the calculated payback rate (0.063) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the borrower's payback rate is 0.063.

Step 3: Calculate the annual repayment amount by multiplying the borrower's AGI by the payback rate: ($25,000×0.063=$1,575).

Step 4: Calculate the monthly repayment amount by dividing the annual repayment amount by 12 months: ($1,575÷12=$131.25).

Step 5: Compare the calculated monthly repayment amount ($131.25) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the borrower's monthly repayment amount is $131.25 under Option 1.

Step 6: If the borrower has chosen Option 2, compare the monthly repayment amount under Option 1 ($131.25) to the amount the borrower would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the borrower chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $128.50 ($10.28×12.5). Because the monthly payment calculated under Option 1 ($131.25) exceeds the 12-year standard amortization amount ($128.50), the borrower's monthly repayment amount is $128.50 under Option 2.

Example 2: Married borrowers with a combined Adjusted Gross Income (AGI) of $30,000. The husband has $5,000 of Direct Loans. The wife has $15,000 of Direct Loans. The couple has two dependents.

Step 1: Under either Option 1 or Option 2, calculate the husband's payback rate.

Because his debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

• Subtract $1,000 from the amount of the husband's loans: ($5,000 − $1,000=$4,000).

• Multiply the result by 0.000002: ($4,000×0.000002=0.008).

• Add the result to 0.04: (0.04+0.008=0.048).

• The result is the husband's payback rate.

Step 2: Compare the husband's calculated payback rate (0.048) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the husband's payback rate is 0.048.

Step 3: Calculate the husband's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the husband's loans ($5,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$5,000÷$20,000=$7,500).

Step 4: Calculate the husband's annual repayment amount by multiplying the husband's assumed AGI ($7,500) by his payback rate (0.048): ($7,500×0.048=$360).

Step 5: Divide the annual repayment amount by 12 months: ($360÷12=$30).

Step 6: Calculate the couple's total family size adjustment amount by multiplying the number of dependents (2) by $7: (2×$7=$14).

Step 7: Calculate the couple's individual family size adjustment amounts by dividing the total family size adjustment ($14) by 2: ($14÷2=$7).

Step 8: Calculate the husband's monthly repayment amount by subtracting his family size adjustment amount ($7) from the amount calculated in Step 5 ($30): ($30 − $7=$23).

Step 9: Calculate the wife's payback rate. Because her debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

• Subtract $1,000 from the amount of the wife's loans: ($15,000 − $1,000=$14,000).

• Multiply the result by 0.000002: ($14,000×0.000002=0.028).

• Add the result to 0.04: (0.04+0.028=0.068).

• The result is the wife's payback rate.

Step 10: Compare the wife's calculated payback rate (0.068) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the wife's payback rate is 0.068.

Step 11: Calculate the wife's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the wife's loans ($15,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$15,000÷$20,000=$22,500).

Step 12: Calculate the wife's annual repayment amount by multiplying the wife's assumed AGI ($22,500) by her payback rate (0.068): ($22,500×0.068=$1,530).

Step 13: Divide the annual repayment amount by 12 months: ($1,530÷12=$127.50).

Step 14: Calculate the wife's monthly repayment amount by subtracting her family size adjustment amount calculated in Step 7 ($7) from the amount calculated in Step 13 ($127.50): ($127.50 − $7=$120.50).

Step 15: Calculate the couple's combined monthly repayment amount by adding the husband's monthly repayment amount calculated in Step 8 ($23) and the wife's monthly repayment amount calculated in Step 14 ($120.50): ($23+$120.50=$143.50).

Step 16: Compare the couple's combined monthly repayment amount ($143.50) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the couple's combined monthly repayment amount is $143.50 under Option 1.

Step 17: If the couple has chosen Option 2, compare the combined monthly repayment amount under Option 1 ($143.50) to the amount the couple would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the couple chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $205.60 ($10.28×20). Because the monthly payment calculated under Option 1 ($143.50) does not exceed the 12-year standard amortization amount ($205.60), the couple's combined monthly repayment amount is $143.50 under Option 2.

Table—Income Contingent Repayment Plan

Note: This table will not appear in the Code of Federal Regulations.

BILLING CODE 4000-01-P

Income Contingent Repayment Plan

Sample Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels Under Option 1

Use the table values if there are no dependents. Otherwise, subtract $7 for each dependent other than a spouse, up to 5 dependents, and if the result is less than $25 no payment is required.

	Initial Debt																			
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25	25
3,000	0	0	0	0	0	0	0	0	0	0	0	27	30	32	35	37	38	38	38	38	38	38	38	38
4,000	0	0	0	0	0	0	0	26	26	29	33	36	39	43	46	49	50	50	50	50	50	50	50	50
5,000	0	0	0	0	26	28	30	33	35	37	41	45	49	53	58	62	63	63	63	63	63	63	63	63
6,000	0	0	27	29	32	34	37	39	42	44	49	54	59	64	69	74	75	75	75	75	75	75	75	75
7,000	25	28	31	34	37	40	43	46	48	51	57	63	69	75	81	86	88	88	88	88	88	88	88	88
8,000	29	32	35	39	42	45	49	52	55	59	65	72	79	85	92	99	100	100	100	100	100	100	100	100
9,000	32	36	40	44	47	51	55	59	62	66	74	81	89	96	104	111	113	113	113	113	113	113	113	113
10,000	36	40	44	48	53	57	61	65	69	73	82	90	98	107	115	123	125	125	125	125	125	125	125	125
12,500	45	50	55	60	66	71	76	81	86	92	102	113	123	133	144	154	156	156	156	156	156	156	156	156
15,000	54	60	66	73	79	85	91	88	104	110	123	135	148	160	173	185	188	188	188	188	188	188	188	188
17,500	63	70	77	85	92	99	106	114	121	128	143	158	172	187	201	216	219	219	219	219	219	219	219	219
20,000	72	80	88	97	105	113	122	130	138	147	163	180	197	213	230	247	250	250	250	250	250	250	250	250
22,500	81	90	99	109	118	128	137	146	156	165	184	203	221	240	259	278	281	281	281	281	281	281	281	281
25,000	90	100	110	121	131	142	152	163	173	183	204	225	246	267	288	308	313	313	313	313	313	313	313	313
30,000	108	120	133	145	158	170	183	195	208	220	245	270	295	320	345	370	375	375	375	375	375	375	375	375
35,000	125	140	155	169	184	198	213	228	242	257	286	315	344	373	403	432	438	438	438	438	438	438	438	438
40,000	143	160	177	193	210	227	243	260	277	293	327	360	393	427	460	493	500	500	500	500	500	500	500	500
45,000	161	180	199	218	236	255	274	293	311	330	368	405	443	480	518	555	563	563	563	563	563	563	563	563
50,000	179	200	221	242	263	283	304	325	346	367	408	450	492	533	575	617	625	625	625	625	625	625	625	625
55,000	197	220	243	266	289	312	335	358	380	403	449	495	541	587	633	678	688	688	686	688	688	688	688	688
60,000	215	240	265	290	315	340	365	390	415	440	490	540	590	640	690	740	750	750	750	750	750	750	750	750
65,000	216	260	287	314	341	368	395	423	450	477	531	585	639	693	748	802	813	813	813	813	813	813	813	813
70,000	216	280	309	338	368	397	426	455	484	513	572	630	688	747	805	863	875	875	875	875	875	875	875	875
75,000	216	300	331	363	394	425	456	488	519	550	613	675	738	800	863	925	938	938	938	938	938	938	938	938
80,000	216	320	353	387	420	453	487	520	553	587	653	720	787	853	920	987	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
85,000	216	340	375	411	446	482	517	553	588	623	694	765	836	907	978	1,048	1,063	1,063	1,063	1,063	1,063	1,063	1,06[illegible]	1,063
90,000	216	360	398	435	473	510	548	585	623	660	735	810	885	960	1,035	1,110	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125
95,000	216	380	420	459	499	538	578	618	657	697	776	855	934	1,013	1,093	1,172	1,188	1,188	1,188	1,188	1,188	1,188	1,188	1,188
100,000	216	400	442	483	525	567	608	650	692	733	817	900	983	1,067	1,150	1,233	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

Under Option 2, the monthly repayment amount will never exceed the values in the following line:

Initial Debt																						
$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$26	$51	$77	$103	$129	$154	$180	$206	$231	$257	$309	$360	$411	$463	$514	$566	$617	$668	$720	$771	$823	$874	$926	$1,028

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federal register

Thursday
July 7, 1994

Part III

Department of Education

34 CFR Parts 668, 682, and 690

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program; Interim Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 690

RIN 1840–AB85 and 1840–AB80

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Interim final regulations with invitation for comment; Correction; Extension of comment period; Compliance with information collection requirements.

SUMMARY: On April 29, 1994, the Secretary of Education published in the **Federal Register** interim final regulations with an invitation for comment for the Student Assistance General Provisions, Federal Family Education Loan programs, and the Federal Pell Grant (59 FR 22348). The final regulations listed the comment period end date as June 20, 1994.

Members of the financial aid community have requested an extension of the comment period. The Secretary agrees that a longer comment period would give the financial aid community a better opportunity to thoroughly evaluate the final regulations and submit more comprehensive comments to the Department. Therefore, the Secretary extends the comment period to July 28, 1994, which is 90 days following the April 29 publication date.

This document also clarifies the Secretary's intent in publishing "interim final regulations with invitation for comment," adds an Office of Management and Budget (OMB) control number to certain sections of the regulations, and corrects the effective date statement and corrects an error in the preamble in the final regulations published in the **Federal Register** on April 29.

DATES: Comments must be received on or before July 28, 1994. The corrections to the April 29 regulations and the addition of OMB control numbers in §§ 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 are effective July 7, 1994.

ADDRESSES: All comments concerning the final regulations should be addressed to Greg Allen and Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 4318), Washington, DC 20202–5342.

FOR FURTHER INFORMATION CONTACT: Greg Allen and Wendy L. Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 4318), Washington, DC 20202–5343. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on April 29 had an effective date of July 1, 1994, in accordance with 20 U.S.C. 1089(c), which required that the Secretary publish such regulations "in final form by May 1, 1994" to be in effect for the 1994–1995 award year, which begins on July 1, 1994. Under the terms of 20 U.S.C. 1089(c), any regulatory changes that the Secretary published after May 1, 1994, could not take effect, at the earliest, until July 1, 1995. Thus, the April 29 regulations are final and effective at least with respect to the period July 1, 1994 through June 30, 1995. The "interim" nature of the April 29 regulations reflected the possibility that changes might be made to take effect on July 1, 1995.

The Secretary solicited public comment in the April 29 final regulations to determine whether any changes should be made to take effect on July 1, 1995, the earliest that any such changes can take effect under 20 U.S.C. 1089(c). In order for any such changes to take effect by July 1, 1995, the changes would, under 20 U.S.C. 1089(c), have to be published in final form by December 1, 1994.

Compliance with the information collection requirements in certain sections of the regulations published on April 29 was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1990, as amended. On June 23, 1994, OMB approved those information collection requirements, and affected parties must now comply with those requirements. The Secretary corrects the effective date statement in the April 29 regulations to reflect this more accurately.

A section of the *Analysis of Comments and Responses* was omitted from the final regulations published on April 29. The Secretary notes that the changes to the regulatory text corresponding to this omitted section of the preamble were included in the April 29 final regulations. The omitted material, which is included in this document, is the explanation for those changes.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship.

Dated: June 30, 1994.

Richard W. Riley,

Secretary of Education.

1. The authority citation for part 668 of title 34 of the Code of Federal Regulations continues to read as follows:

Authority: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

2. The following sections are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" at the end of each of these sections: Sections 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414 682.416, 682.711, and 690.083.

3. The following corrections are made in FR Doc. 94–10140, published on April 29, 1994 (59 FR 22348):

a. On page 22348, column column 1, the first sentence after "**DATES:** Effective Date:" is corrected to read as follows: These regulations take effect July 1, 1994, except that compliance is not required with the information collection requirements in §§ 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

On page 22382, column 2, the following text is added after "*Changes*: None."

Comments: One commenter expressed concern that the Secretary had not defined the circumstances in which an institution could satisfy the financial responsibility requirements added through the Technical Amendments of 1993 by demonstrating that it had sufficient resources to ensure against precipitous closure. The commenter suggested that the regulations need to

provide specific guidance to institutions showing when the exception can be used. Several other commenters also questioned whether the general financial responsibility standards in the proposed regulations were consistent with the statutory exception permitting an institution to participate without restrictions by demonstrating that it has sufficient resources to ensure against precipitous closure.

Discussion: The Secretary agrees to establish a standard in the regulations that is consistent with the explanation made by Senator Pell that the technical amendments were intended to make sure that financially at-risk institutions are subject to careful scrutiny, to protect institutions that are not financially at risk, and to accomplish these aims without weakening the general standards for financial responsibility. See 139 Cong. Rec. 162–2, S16593 (daily ed. November 19, 1993). The Secretary therefore considers it necessary to define the limited circumstances in which an institution may satisfy the statutory exception in a manner that will not create a lower standard for financial responsibility.

Because an institution using this exception will not be required to post surety or enter into provisional certification, the Secretary has minimized the Federal risks in such unprotected participation by making the exception only available to an institution that met the financial responsibility requirements in its last timely submitted audited financial statement. This structure will permit an institution that now fails the financial responsibility requirements but meets the alternate standards in the exception to have an opportunity to improve its financial condition for one year without having to post surety or be placed under provisional certification. This requirement prevents this exception from becoming a means to continue participating under a lower standard of financial responsibility than that required for all other institutions. An institution that has not satisfied the general standards of financial responsibility in its previous audit and has not improved its operations to meet current financial responsibility standards is not permitted to participate on an unrestricted basis under this provision, and is required to provide the additional safeguards presented through a surety or through provisional certification.

If an institution that met the standards of financial responsibility, as demonstrated by its last audited financial statement, fails to meet these standards in its current audit, it can show that it meets the alternate standards in this provision in order to participate on an unrestricted basis for one year to give it an opportunity to solidify its operations and demonstrate that it meets financial responsibility standards in its next timely submitted audited financial statement. Such participation without surety or provisional certification can only be permitted where the institution meets all of the requirements in § 668.15(d)(2)(ii)(A) to show that it is current in all tax obligations, its equity and operating income have not materially decreased since its last audit, and that it is not shifting the institution's operating capital to its owners or related parties. These standards are necessary to show that the institution's financial condition has not significantly deteriorated since it last demonstrated financial responsibility, and that the institution's failure to meet the current financial responsibility standards is not exacerbated by benefits given to its owners or related parties.

In order to participate without restriction under this provision, an institution that now fails to demonstrate financial responsibility after having done so in its last audit, must show that it has not accelerated the funds going to its owners or related parties through disproportionately large salary increases, or through making uncollateralized loans to these parties. The institution must also show that all loans made to the institution's owners or related parties are in repayment, and that a demand has been made for repayment of any loans that did not carry fixed payment terms. These measures will help ensure that the institution's failure to demonstrate financial responsibility is not due to capital diverted to its owners or related parties.

The institution must also show that there have been no material findings in the institution's latest compliance audit, and that there are no pending administrative or legal actions pending before a member of the Triad or other Federal or State entity.

Changes: Section 668.15(d) now provides that the Secretary considers an institution to be financially responsible, even if the institution does not meet the general standards of financial responsibility (except for the minimum cash reserve requirement) if the institution establishes to the satisfaction of the Secretary, with the support of an audited financial statement, that the institution has sufficient resources to ensure against its precipitous closure. As a part of this showing, an institution must establish that it has the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if the institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement and that its most recent audited financial statement indicates the following (if no prior audited financial statement was requested by the Secretary, the institution must demonstrate in conjunction with its current audit that it would have satisfied the following): (a) All taxes owed by the institution are current; (b) The institution's net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan; (c) loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year's working capital of the institution; (d) The equity of a for-profit institution, or the total net assets of a nonprofit institution, have not decreased by more than 10 percent of the prior year's total equity; (e) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option allowances, 401(k) contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees; (f) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party; (g) All obligations owed to the institution by related parties are current, and the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. The regulations clarify that, for purposes of these provisions, a person does not become a related party by attending an institution as a student.

Finally, in order for the Secretary to consider the institution to have sufficient resources to ensure against precipitous closure, the institution would also have to demonstrate that (1) there have been no material findings in the institution's latest compliance audit of its administration of the Title IV,

HEA programs and (2) there are no pending administrative or legal actions being taken against the institution by the Secretary, and other Federal agency, the institution's nationally recognized accrediting agency, or any State entity.

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